

The Canada Not For Profit Corporations Act: Perceived impact on the governance of
federal sport organizations

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Submitted in partial fulfillment of the requirements for the degree of
Master of Arts in Applied Health Sciences (Sport Management)

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Abstract

This thesis examined the impact of the *Canada Not-for-Profit Corporations Act* (2009) on the governance of national sport organizations (NSO). The impact of the legislation was explored through the perceptions of NSO executive leaders and by analyzing the by-laws in effect before the legislation. The legislation was perceived to have the greatest impact on enhancing accountability, specifically affecting membership categories and director selection. The interview data showed that the legislation was necessary to enhance accountability in many NSOs. The Respondents also demonstrated that they understood the goals sought through the legislation. The data also showed that the boards of NSOs were already in alignment with the goals of the legislation. With respect to governance, the data indicated that NSOs rely almost exclusively on their regional sport associations as voting stakeholders. An emerging issue that came out of the results was the role of athletes in the governance of sport organizations.

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Acknowledgments

I would like to first thank my parents, Nicholas and Ketsana, for their unwavering and constant support over the past few years. Completing this Master's degree has proven to be difficult at times and it did not always go according to plan. No matter how long it took or whatever additional resources I needed, my parents were always there pushing me and supporting me all the way to the end. Thank you both, I literally could not have got to the end without your support. Love you both.

Next, I would like to thank my lovely fiancée Katie. We both embarked on a Master's journey at the same time and went through the frustrations and elations of the process together. You supported and motivated me all the way, through all the late nights, early mornings, and all the missed social and family events. You have been my editor, presentation audience, communication filter, shoulder to lean on, voice of reason, and biggest fan. You have kept me going on so many occasions when I was near giving up, so I thank you for pushing me and helping me finally achieve this goal. I love you and I am looking forward to building our life together.

Finally, I would like to acknowledge and thank my Academic Supervisor, Hilary A. Findlay. This process has been quite revealing and has taught me so many things about myself and my capabilities. Hilary's standards for excellence and attention to detail have greatly contributed to the quality of this project. I am very appreciative of her patience and dedication to improving my abilities as a researcher, writer, and critical thinker. I am certain that all she has taught me will be instrumental in my future professional career.

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Glossary of Terms

CNCA, “*NFP Act*”, “the legislation” – Canada Not-for-Profit Corporations Act

CCA, “the old Act”, “previous legislation” – Canada Corporations Act

CBCA – Canada Business Corporations Act

CRA – Canadian Revenue Agency

AGM – Annual General Meeting, same as an “annual meeting of members”

ITA – Income Tax Act

RCAAA, *CAAA* – Registered Charity Amateur Athletics Association

BOD – Board of Directors

CEO – Chief Executive Officer

ED – Executive Director

NFP – Not-for-Profit

NSO – National Sport Organization

PTSO – Provincial or Territorial Sport Organization

MSO – Multi-sport Service Organization

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Chapter I

Introduction

The *Canada Not-for-Profit Corporations Act* (S.C. 2009, c. 23) came into effect October 17, 2011, bringing significant changes for organizations in the not-for-profit sector. The *Canada Not-for-Profit Corporations Act*, henceforth referred to as the “*NFP Act*”, has had an impact on the approximately 19,500 active¹ federal not-for-profit corporations previously operating under the *Canada Corporation Act* (R.S.C., 1970, c. C-32), henceforth referred to as ‘the *CCA*’. There is an immense range in the types of corporations affected by the new legislation, from sport organizations to symphony orchestras, airport authorities, advocacy groups, and recreation associations, among others (Burke-Robertson & Godel, 2011; Corbett, 2011a; Gray, 2010).

The *NFP Act* affects only federal-level sport; however, this includes virtually all national sport organizations (NSO) and multi-sport service organizations (MSO). Industry Canada gave a three-year transition window, or until October 2014, to all federal not-for-profit organizations previously operating under the *CCA* to make the transition to the *NFP Act*. Those organizations not meeting the deadline risk losing their legal status and could face dissolution by Industry Canada as the *CCA* will cease to exist (Corbett, 2011a).

Most of the changes that organizations have made must be approved at a meeting of the membership. The majority of sport organizations hold a single annual meeting with members, often called the annual general meeting (AGM) or annual meeting according to the *NFP Act*. When this study began in early 2012, almost one transition

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year had already elapsed leaving sport organizations affected by the *NFP Act* only two years to get the changes approved.

Background of the legislation

The *NFP Act* was drafted in response to the not-for-profit sector's plea for updated corporate legislation making it more modern, relevant and efficient (Gray, 2010). As a result, an objective of the legislative drafters was to modernize the corporate law framework and provide the not-for-profit sector with adequate and comprehensive regulation (Cumming, 1973; Gray, 2010). Despite its long reign over federal corporations, both for-profit and not-for-profit, the *CCA* had not been significantly amended to accommodate the evolving corporate landscape since 1917 – the time of World War I (Cumming, 1973; Gray, 2010; Gray, 2011).

The development of the not-for-profit sector reflects the rate of growth of corporations in Canada. In 1992, there were roughly 109,000 registered not-for-profit corporations in Canada. A decade later this number had increased to an estimated 161,000 registered corporations (Hirshhorn, 1997; Gray, 2010). With respect to their economic impact, the not-for-profit sector accounted for approximately \$74 billion in gross domestic product (GDP) in 1994. By 2009, the sector accounted for \$90 billion in GDP (Eakin & Graham, 2009; Hirshhorn, 1997).

As the corporate landscape grew, the deficiencies of the *CCA* became more apparent and led to a strong demand for legislative reform in the 1970s (Cumming, 1973). In 1975, the *Canada Business Corporations Act (CBCA)* was enacted to regulate federal for-profit corporations. It took another 36 years for similar legislation to be enacted for the not-for-profit sector (Dickerson, Howard, & Getz, 1971; Gray, 2010).

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Two main themes guided the *NFP Act* drafting process: greater transparency in organizational operations, and greater accountability to the corporation and its stakeholders (Kitching & Wispinski, 2004). These two themes are common to a broader public policy perspective of creating greater accountability for leaders of “non-profit” corporations, specifically that the directors are being held legally accountable for the affairs of their organization (Kikulis, 2000). Kikulis (2000) points out those pressures that influence policy come from the government, the legal environment and cultural expectations within the sector. Thus, it is no surprise that the themes coming out of the drafting of the *NFP Act* align with broader public policies.

Sport organizations represent a very small number of the total affected corporations, yet their economic contribution to the sector is significant. Sport organizations represent less than 1% of the 19,500 active corporations affected because many are registered under different legislation, such as provincially or territorially; as such, the legislation was not drafted specifically for sport. Still, organizations that deal with sport in general represent 21% of Canada’s total registered not-for-profit corporations (National Survey of Non-profit and Voluntary Organizations (NSNVO), 2006). In 2004, the revenues from sport and recreation organizations accounted for 5% of total revenues for the not-for-profit sector (NSNVO, 2006). In 2004, the revenues generated from sport and recreation organizations contributed 1.1% of the total Canadian GDP, and also accounted for 2% (262,325) of the total jobs in Canada (Eakin & Graham, 2009).

Sport organizations have particular organizational and governance structures which are not typical of the not-for-profit sector. Consequently, the provisions in the

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NFP Act may not be ideally suited for the way that sport operates. For sport organizations, there was potential for difficulties to arise during transition from the *CCA* to the *NFP Act*, and such difficulties were anticipated to influence the leaders' perceptions of the legislation; therein exists one of the interests of this study.

Relevance of this study

The newness of the legislation meant that there was limited research on its impact on governance, and even less literature on its implications for sport. The existing literature that directly addresses the *NFP Act* is of a legal nature, with a focus on the interpretation of the provisions and the impact on the not-for-profit sector overall. There is however adequate literature on the historical development of the *NFP Act*, as well as writings on the changes in the not-for-profit sector that led to the demand for a stand-alone not-for-profit legislation. The sport related literature thus far has been limited and has focused on an analysis of the provisions of the legislation and speculation as to how the *NFP Act* may impact sport. This study builds on the current literature that examines the impact of the legislation on the not-for-profit sector, but the focus is on federal-level sport organizations in Canada. Beyond the concentration on sport, this study contributes new insights about the *NFP Act*'s impact by examining the perceptions of sport leaders from affected organizations. This study adds a new viewpoint to the discussion of the legislation's impact from the perspective of those organizations that were undergoing changes initiated by the *NFP Act*.

Research Questions

The purpose of this study was to explain how NSO leaders perceived the impact of the legislation on the governance structure of their respective sport organization. To

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address this focus, the study researched the relevant information by exploring how sport leaders perceived the impact of the legislation. In conducting this study, the following research questions guided the inquiry:

Research Question 1 (RQ1):

What do federal sport leaders perceive to be the mandate of the *NFP Act*?

Research Question 2 (RQ2):

How do federal sport leaders think the requirements of the *NFP Act* will impact the governance structure of their organization and in general, affect their organization?

Limitations

There are many factors that influenced the quality of this study. The following list of limitations constrained this qualitative study:

- 1) Time and financial constraints limited the reach of this study.
- 2) At the time of data collection, the transition window that organizations have to comply with the *NFP Act* will still be open with potentially one or two years remaining before the transition deadline. At the time of writing this thesis report, the three-year window for compliance had almost elapsed. This means that the sport organizations were at different stages in their transition, which creates inconsistency in the interview data. If an organization had not yet begun the transition, it is possible that the interview participants may have had limited knowledge of the legislation and its impact on their organization.
- 3) Since each organization was at different stages in the transition process, the level of preparation and approach to making changes to comply with the legislation varied. As such, the types of individuals involved in the organization's transition differed between NSOs. Despite the design of this study with regard to interview

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participant selection, it was not possible to have a consistent number of participants from each NSO selected to participate.

- 4) This study explored the phenomenon (how leaders perceive the impact of the legislation) as the changes are happening in the organizations. The challenge, or limitation, was extracting the relevant information from the interview participants that will answer the specific research questions of this study.
- 5) Researcher bias in the interpretation of the interview participants' perceptions.

Delimitations

The following delimitations were incorporated into the design of this thesis research project with the intention of limiting the scope of this study and guiding its direction.

- 1) This study focused on Canadian national sport organizations (NSO) and excluded multi-sport service organizations (MSO). This significantly reduced the size of the possible sample population for the study from 90 federal sport organizations down to 59 NSOs. Despite the potential sample population of 59 NSOs that satisfy the selection criteria, this study was further limited to eleven sport organizations with a variety of organizational structures and with different changes required to comply with the legislation.
- 2) The interview participants from selected NSOs were carefully selected based on their specific qualities, particularly their position in the organization, and their involvement in the transition process. Ideally, each NSO was to be represented by two different respondents but if there was a lack or surplus of available interview

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participants, a minimum of one and maximum of three interview participants were accepted.

- 3) This study focused on the impact of the *NFP Act* from a governance perspective, specifically the impact on the organizations' structure such as membership categories, director selection, and the board of directors in terms of board composition. The legislation addressed issues with implementation, process of change, and efficiency of the organization. Discourse on these areas was delimited through the use of a semi-structured interview guide that maintained the focus of discussion on the particular elements related to governance.

Notes for Chapter I

- ^{1.} Corporation status refers to the corporate's current legal status, this is not a reflection of whether the "body corporate" is operating or not. All registered "body corporates" are counted by Industry Canada but are classed as one of the following: active, dissolved, inactive (amalgamated), or inactive (discontinued). Federal Government of Canada. (2011). Corporations Canada. Ottawa, Ontario: Industry Canada. Retrieved from http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/h_cs03938.html

Chapter II

Review of Literature

The Canada Not-for-Profit Corporations Act (*NFP Act*) is the first dedicated piece of legislation for federal not-for-profit corporations in Canada. The *NFP Act* has critical significance to national sport organizations (NSO) that are federally incorporated as it requires specific changes that will affect their governance structures, and, as a result, impact such sport organizations in a significant way.

This Chapter will provide a detailed presentation of current literature relating to, and supporting, the topic of this research study. This review of literature is divided into four main sections so as to examine the impact of the *NFP Act* on the Canadian sport landscape. The first section will outline the differences between for-profit and not-for-profit corporations. The second section will focus outlining key aspects of governance and other related concepts. The third section will examine the historical development of the *NFP Act*, including the background and rationale behind the development of the legislation. The fourth section will outline the key provisions of the *NFP Act* that were anticipated to have a significant impact.

Not-for-profit compared to for-profit corporations

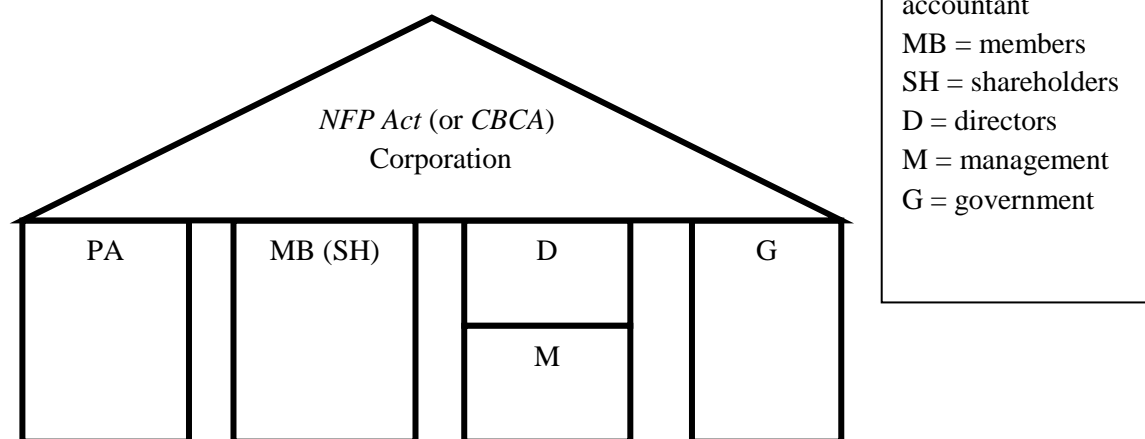
There are two basic types of corporations under Canadian law, the for-profit corporation and the not-for-profit corporation (Cumming, 1973; Gray, 2010; Gray, 2011). Most national sport federations fall under the latter category. Prior to the *NFP Act* receiving royal assent in the fall of 2009, both types of corporations were governed by the Canada Corporations Act (*CCA*). The introduction of the *NFP Act* marks the first time that legislation has been put in place at the federal level that specifically deals with the

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interests and dynamics of the not-for-profit corporation. It took some forty years and seven previous legislative bills to bring the *NFP Act* to fruition; in that time, not-for-profit corporations were frustrated by for-profit regulation under the *CCA* (Cumming, 1973). This section will deal with the introduction of this legislation.

The key differences between not-for-profit and for-profit corporations.

Organizations in Canada that are incorporated² are necessarily governed by legislation. Once an organization incorporates, whether at the provincial/territorial or federal level, it is governed and regulated by the respective legislation. Not all sport organizations are necessarily incorporated; however, all national sport organizations (NSO) are incorporated and are thus regulated by federal legislation. This study deals with federal legislation and thus only examines the impact of the *NFP Act* on NSOs. The main distinction between the two types of corporations is that for-profit corporations have shareholders with an ownership stake in the corporation, whereas not-for-profit corporations have members (Cumming, 1973; Gray, 2011). The financial interest of shareholders is a key distinguishing characteristic of the relationship between the for-profit corporation and its shareholders versus that of the not-for-profit corporation and its members. This difference becomes especially important when comparing the *NFP Act* with its for-profit counterpart, the *Canada Business Corporations Act (CBCA)*. Gray's (2011) diagram, at Figure 1, distinguishes the key characteristics of for-profit and not-for-profit corporations by identifying the key governance players, or as he calls them "governance pillars", in both the for-profit and not-for-profit corporate legislation.

Figure 1 - Key characteristics of corporations

As shown in Figure 1, structural characteristics of both for-profit and not-for-profit corporations are very similar, the key distinction being the shareholder (SH) or member (MB) pillar. Gray (2011) argues that simply substituting the “SH” pillar with a “MB” pillar could become problematic as each stakeholder group has different interests in the corporation, and, as such, should have different rights. Specifically, members of not-for-profit corporations do not have an ownership stake in their organization and thus are less inclined to become involved in governance. Therein lies a great challenge under the *NFP Act* for making members a more meaningful part of the overall governance structure (Gray, 2011). Consequently, the “MB” pillar is a much less reliable governance pillar than the “SH” pillar because of the lack of a financially vested interest, and shifts the burden of governance onto the other pillars for the not-for-profit corporation (Gray, 2011).

Gray (2011) suggests that the degree of government (“G pillar”) involvement is also a major distinction between for-profit and not-for-profit corporations. The government has minimal involvement with for-profit corporations because the *CBCA*

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encourages shareholder policing and enforcement with strong shareholder rights and remedies. For not-for-profit corporations operating under the *NFP Act*, Gray (2011) states that the Government pillar has greater influence because of the charity-like status, which subjects not-for-profit corporations to greater regulatory scrutiny. Most NSOs have Registered Charity Amateur Athletic Association (RCAAA)³ status, which makes them accountable to government regulatory agencies such as the Canadian Revenue Agency (CRA) (Gray, 2011).

Good corporate governance, accountability and transparency

In this second section, key concepts related to governance will be defined and discussed. Governance has been variously defined as the exercise of authority and power, determining the organizational mission, and core policy making in organizations (Aguilera, 2005; Ferkins & Shilbury, 2011; Hums & MacLean, 2004). While for-profit and not-for-profit corporations differ, both types of corporations are similar with respect to their governance. The concept of good governance is the same in any type of corporation, in the corporate world it is often referred to as “corporate governance” or “good corporate governance” (Geeraert, 2013, p. 3). Many authors use the term “good governance” but it is important to note that there is no single accepted definition, nor are there any objective standards for determining when a corporation has “good governance”; however, two common fundamental principles consistently appear: corporate accountability and transparency (Aguilera & Cuervo-Cazurra, 2004; Aguilera & Cuervo-Cazurra, 2009; Nanda, 2006; Woods, 1999).

Corporate accountability has been variously defined as the ethical means by which individuals and organizations report to and recognize authorities, and are held

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responsible for their actions (Ebrahim, 2003; Garsten, 2003; Kearns, 1994; Raynard, 1998; Ribstein, 2005; Young, Bania, & Bailey, 2006; Zadek, 2003). More broadly, Fry (1995) says that corporate accountability aims to ensure that all members within an organization behave in a manner that is consistent with shared standards and expectations. Corporate transparency can be defined as a characteristic of genuine, open and honest leadership that typically includes accurate and timely disclosure of all materials regarding the governance of the corporation (Bandsuch, Pate, & Thies, 2008; Bothwell, 2004; Hess, 2005; Potts & Matuszewski, 2004; Raynard, 1998). Bandsuch et al. (2008) further explain that transparency is an essential element of corporate governance, and a vital component of effective leadership.

Woods (1999) recognized the ambiguity in how “good governance” has been variously defined by different authors, stating that some have simplified it to mean good quality management, while others have defined it more broadly as the “establishment and operation of the rules of the game that serve to define social practices, assign roles, and guide interactions” (p. 41). Woods (1999) says that the fundamental principles of accountability and transparency have been identified by some international institutions, such as the World Bank and agencies of the United Nations, as factors that are indicators of good governance along with principles such as participation and fairness.

Accountability and transparency are now universal principles in many emerging codes of good governance (Aguilera & Cuervo-Cazurra, 2004). Codes of good governance are defined as “a set of ‘best practice’ recommendations regarding the behavior and structure of the board of directors of a firm” (Aguilera & Cuervo-Cazurra, 2004, p.417). Despite the unique corporate environment across countries worldwide, Aguilera and Cuervo-

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Cazurra (2004) state that codes of good governance tend to prescribe the same mechanisms, primarily the transparency and accountability of board practices.

It is difficult to measure good governance, but when describing the governance of a corporation there are two aspects to consider: the governance structure and governance model. On one hand, the structural aspects of governance establish the mechanisms or what it will look like in a corporation, specifically the structure of the board. The board of directors is the top governance mechanism in the corporation and is typically responsible for making high level decisions on behalf of the corporation. Structural aspects of the board would include things such as how the directors are selected, how they are removed, the size of the board, etc. With respect to accountability, an effective governance structure will clearly set out to whom the board of directors is accountable and how that accountability will be exercised (Crawford & Carter, 2011). On the other hand, the governance model of a corporation addresses how governance happens in a corporation. This includes establishing the role of the board its directors, how the board makes decisions, what responsibilities are delegated and to whom. The governance model of a corporation will differ between corporations because it depends on individual needs of the organization. For example, governance of a small business is different from that of a huge corporation, a technology company may differ from a manufacturing company, and a structurally flat company could be different from a hierarchical structured company – all of which could be either not-for-profits or for-profits. Conversely, the governance structures of corporations within similar types of organizations will more likely be similar as these structural aspects are often governed by corporate legislation.

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Characteristics of board structure that can affect governance.

Board structure sets out how the board is composed and the methods for selecting directors. A board structure that has a composition targeting directors with specific business skills required to run the corporation has been referred to as a “competency-based” board (Ferkins & Shilbury, 2011; Mercier, 2012). Another common board composition, within sport in particular, is one that targets equal representation among the corporation’s constituents and stakeholders, which has been referred to as a “constituency-based” or “representative-based” board (Corbett, 2011a). The distinguishing factor is the primary strategy for selecting directors, i.e. either focused on competencies or providing constituents with equal representation on the board.

The *NFP Act* does not directly prescribe a certain board structure for not-for-profit corporations, nor should it considering the differences between organizations in the sector. With that said, the legislation indirectly influences board structure by limiting the number of *ex officio* appointments, which is the typical director selection method for “representative-based” boards. The limitations on director appointments, and emphasis on member elections, increases accountability and forces not-for-profits to put focus on director recruitment so that they nominate candidates with the necessary skills. While legislation cannot directly dictate how individual organizations govern themselves, rules and regulations around the structural elements of governance can indirectly influence how the board behaves. This can have an effect on the level of sophistication and professionalism of the corporation, which is part of what the *NFP Act* is trying to achieve by modernizing the not-for-profit sector.

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As the not-for-profit sector grew, the adequacy of not-for-profit reporting and the accountability and ethical behaviour of directors and managers were heavily scrutinized by the government and the public (Hirshhorn, 1997; Sherry & Shilbury, 2011). Sport organizations were not exempt from such greater scrutiny. As such, while NSOs have been encouraged to be autonomous and empowered by the government, they have also been subject to increasing systems of audit and performance measurement (Hoye, 2003; Sam, 2009). Hirshhorn (1997) points out that organizations are now facing a more questioning and critical public, with individuals looking for greater assurance that their donations are contributing to the achievement of social objectives and that not-for-profits are being prudently managed. In the not-for-profit sector, as in the for-profit sector, there is equal need for establishing rules of fair conduct and improved fiduciary safeguards to prevent fraud and preserving a high level of trust (Hirshhorn, 1997). Houlihan and Green (2008) state that a long-term erosion of trust and confidence in public service professionals has since been replaced with neutral techniques and objective measures. The purpose for these objective techniques is to create greater measures of accountability. The government establishes these standards using laws such as organizational legislation, which include the federal and provincial corporate acts (Hirshhorn, 1997).

The federal government's greater expectation of the not-for-profit sector

In this third section, the historical development of the *NFP Act* will be discussed. Over the past 30 years, the not-for-profit sector, often called the third or voluntary sector, has grown both in size and in economic significance (Cornforth, 2012). A major contributing factor to the rapid growth of the not-for-profit sector is the increased use of not-for-profit corporations for public service delivery (Cornforth, 2012; Hirshhorn, 1997).

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On the one hand, the government's increased use of the not-for-profit sector has had a significant impact on developing the sector economically, but on the other hand it has come at the cost of greater governmental monitoring. Cornforth (2012) points out that as the sector becomes more significant and more reliant on government funds, it will also attract greater attention and scrutiny. In particular, there has been a focus on governance structures and questioning whether they are adequate to ensure that not-for-profit sector corporations operate effectively, responsibly, and with accountability, i.e. with good governance (Cornforth, 2012).

Sport organizations used to promote government objectives.

Sport organizations represent less than 1% of the entire not-for-profit sector, but they are unique in that they have a significant role in society. Sport organizations face similar scrutiny as other organizations in the not-for-profit sector although perhaps with additional government attention because of their ability to reach communities and the impact that they can have on society. For example, Sam (2009) asserts that governments have "high expectations from their involvement with sport, including the prospects that it will generate economic growth, decrease health expenditures, promote social integration and develop national identity" (p. 500). Sport organizations are thus monitored and regulated by the government not only because of the large financial investment, but also to ensure that they are operating in a manner consistent with its broader policy goals (Hoye, 2003).

Evidence for the use of sport as a mechanism for promoting government policy objectives was documented in 1992 in the Minister's Sport Policy Task Force report entitled "Sport: The Way Ahead." The Report outlined a vision of amateur sport

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involving a supportive and co-operative partnership between governments, the not-for-profit and corporate sector organizations, with harmonized policies and programs to enhance the sport experience of athletes at all levels (Harvey, Thibault, & Rail, 1995). Additionally, Cuskelly (2004) says that “recent government policies aimed at increasing participation in organized sport have brought renewed focus to the community sport system and the management of its volunteer labour force” (p. 60). The incentive for the government to financially support sport is not limited to philanthropy and public service delivery, but also to promote its broader public policy objectives.

Houlihan and Green (2008) explain that the “organizational infrastructure of sport was considered to be an impediment to achieving the primary policy goals of elite success and the enhancement of opportunities for young people to participate in sport” (p. 683). The increased demands and expectations of sport, and the not-for-profit sector at large, to deliver results caused the government to encourage governance reform and more business-like, or professional, management practices (Houlihan & Green, 2008; Hoye, 2003; Sam, 2009; Shilbury & Ferkins, 2011).

Professionalization, modernization, and commercialization of the sector.

In the context of the developing not-for-profit sector, professionalization does not simply mean having more paid staff, although this may be a by-product. Nichols and James (2008) define professionalization as “the adoption of a set of management practices which would normally be associated with an organization managed by paid staff, including a formal division of labour into defined roles and systems to ensure consistent service delivery at a competitive standard” (p. 106). Not-for-profits corporations do not have the same financial capacity as for-profit corporations, and they

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often rely on volunteers to carry out the business of the organization. Not-for-profits do not have the ability to pay highly skilled top managers and other staff. Instead, not-for-profits utilize volunteer boards composed of skilled individuals that collectively contribute to the management and governance of the corporation. The shift to more professionalized management practices is challenging for the not-for-profit sector because it changes the way they operate, including a less involved board and more responsibility for the paid staff. The rationale behind the government's drive to improve good governance, specifically to modernize and professionalize the governance and management practices of sport organizations, was to "improve their ability to deliver the outcomes expected of them in return for receiving government funding" (Hoye, 2003, p. 212-213).

Houlihan and Green (2008) define modernize, or modernization, as "ensuring that policy-making is more joined up and strategic; making sure that public service users, not providers, are the focus, by matching services more closely to people's lives; delivering public services that are high quality and efficient" (p. 680). Sam (2009) notes multiple reasons for the government encouragement of reform of this nature for sport. One reason is logical in that "well-functioning, professional sport organizations are likely to have greater capacities to develop their participant and membership bases and their elite programs, teams and athletes" (Sam, 2009, p. 505). Another reason for the encouragement of reform is to replace the traditional volunteer-operational model with more formalized operations and professional management practices such as strategic planning and evaluation using key performance indicators (Hoye, 2003; Sam, 2009). The focus on good governance is thus an indicator of how important professionally delivered

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sport services are to communities (Shilbury & Ferkins, 2011). The authors go on to say that “the outcomes of implementing contemporary governance practices potentially lead to increased coordination and more efficient provision of sporting opportunities” (Shilbury & Ferkins, 2011, p. 109).

Despite the long-standing symbiotic relationship between the government and not-for-profit sport organizations in Canada, another reason for encouraging reform was to make them better equipped to attract corporate sponsorship and, by extension, decrease their reliance on government funding (Sam, 2009). Prior to Sport Canada’s period of budget cuts in the late 1990s, the Nielson Report in 1985 suggested a phasing down of funding of amateur sport to give the development system time to seek and establish sufficient viability, both organizationally and financially, to operate relatively independent of government (Harvey, Thibault, & Rail, 1995; Hoye, 2003; Sam, 2009). This trend created tension as it forced amateur sport organizations to operate more like for-profit corporations with a focus on generating profits despite the *CCA* requirements and operational confines imposed on not-for-profit corporations and registered charities. This tension has been referred to as the “commercialization of sport”. Enjolras (2002) defines commercialization as “the development of commercial activities to finance the production of the collective, mission-related output” (p. 354). The not-for-profit sector struggled with commercialization because their revenue generating abilities were limited by the *CCA*.

The struggle of not-for-profits is illustrated by Sherry and Shilbury (2011) who refer to the sport system in Australia, although the same could apply to the Canadian sport system. The authors state that “many NSOs have grown from their amateur

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foundations into legally complex and highly competitive professional activities; however, amateurism continues to influence the social expectations of sport” (Sherry & Shilbury, 2011, p. 414). While this point refers to sport, the authors highlight more generally the tension between the social expectations of not-for-profit corporations and the evolving reality of what these organizations must do to stay financially stable.

The emerging need for separate legislation for the not-for-profit sector

The need for stand-alone legislation for not-for-profit corporations emerged over the past four decades in response to the sector’s plea for a modern not-for-profit corporate statute (Cumming, 1973; Gray, 2010; Gray, 2011). There were two influential factors that led to the need for, and development of, separate legislation for the not-for-profit sector. The first factor was the drafting and substantive deficiencies of the *CCA* to properly regulate the activities of not-for-profit corporations. The second factor was the changing trend, or demand, for revenue generation in the not-for-profit sector.

Factor 1: Deficiencies of the *CCA*.

Until the introduction of the *NFP Act*, not-for-profit corporations were regulated and governed by the *CCA*. The *CCA* provisions for not-for-profits were minimal and provided extraordinarily confusing guidance for the not-for-profit sector. There were purportedly three broad deficiencies identified in the drafting of the legislation as it pertains to not-for-profits: awkward referencing format, language and terminology, and substantive issues (Cumming, 1973).

The first drafting deficiency of the *CCA* was the awkward format. Specific provisions of the *CCA* pertaining to not-for-profits were set out in *CCA* (1970) Part II, which made up five sections out of the total 220 sections of the document (Canada

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Corporations Act (CCA), 1970). The bulk of the guidance came by reference to other sections of the legislation pertaining to for-profit corporations (Burke-Robertson, & Godel, 2011; CCA, 1970; Cumming, 1973). The legislation sent the reader on a convoluted hunt through multiple sections of the for-profit portion of the document, making research and practical use of the legislation very difficult for practitioners in the not-for-profit sector (Bure-Robertson, & Godel, 2011; Cumming, 1973). For example, s. 157 of the CCA (1970), of which the first paragraph is set out below, pertains to the for-profit sections of the CCA made applicable to not-for-profits, and takes the reader through 69 sections and subsections in total.

157. (1) The following provisions of Part I apply to corporations to which this Part applies, namely:

- (a) Sections 3 and 4, section 5.6, section 6, sections 9 to 12 and section 15;
- (b) Section 16 (except paragraph (1)(r) thereof) and subsections 20(1), (3), (4) and (5)

(Canada Corporations Act, 1970, p. 73).

The second deficiency involved the use of language that is suitable for the for-profit sector, but which did not have resonance in the not-for-profit sector (Cumming, 1973). Perhaps the most obvious language deficiency was the use of the word ‘*shareholder*’. The main stakeholder in a *for-profit* corporation is the shareholder, who is essentially the owner of the corporation (Cumming, 1973; Gray, 2011). There is no parallel stakeholder in the not-for-profit sector as not-for-profit corporations have members not owners. Thus, the not-for-profit corporation had to make the mental transposition every time the word ‘shareholder’ occurred in the CCA; this made it awkward and difficult to comprehend, particularly for the lay person operating under the CCA, and is not an accurate reflection of the not-for-profit corporation. Set out below are

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s. 157(3) and s. 157.1 of the *CCA* (1970) that demonstrate the use of improper terminology for not-for-profit corporations illustrating the second deficiency:

157 (3) In construing the sections of Part I made applicable to corporations under this Part, “shareholder” means a member of such corporation; “the company” or “a company” means a corporation to which this Part applies.

157.1 (1) Sections 222 to 227...and 235 [242] of the *Canada Business Corporations Act* apply, with such modifications as the circumstances require, in respect of corporations to which this Part applies.

(2) In construing the sections of the *CBCA* made applicable to corporations under this Part, “security holder” or “registered holder or beneficial owner” in relation to a security, means a member of a corporation to which this Part applies

(Canada Corporations Act, 1970, p. 74).

Another example of this drafting deficiency is the use of the term “non-profit” used to describe corporations in the not-for-profit sector. Cumming (1973) makes the point that the term “non-profit” is an awkward word that has a certain connotation that no longer fits in the not-for-profit lexicon. Cumming (1973) goes on to explain that, as the not-for-profit sector evolved, there was a corresponding shift in meaning of the term “non-profit”, and this term as used in the *CCA* no longer reflects the reality of what is now known as the not-for-profit corporation. Hirshhorn (1997) explains that the change in term better describes the not-for-profit sector because there is a slight nuance in the meaning. Hirshhorn (1997) says that the former term, “non-profit”, suggests that not-for-profit corporations do not make a profit, whereas the current term recognizes that not-for-profit organizations can and do make a profit – the distinguishing feature is that they do not distribute that profit to members as for-profit corporations do to their shareholders.

The third deficiency involves substantive issues with the drafting of the *CCA*, in that some of the regulations are either insufficient or omitted for the circumstances of the

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not-for-profit corporation. Cumming (1973) points out that the *CCA* makes the false assumption that not-for-profit corporations do not require the equivalent provisions as for-profit corporations. For example, Cumming (1973) points out that in the financial reporting section, section 118 of the *CCA* (1970) provides guidance for directors regarding to financial statements that are required for board meetings, but there is no parallel appropriate provision for the not-for-profit.

Another crucial example of the third deficiency is the lack of clarity around the role of directors for not-for-profit corporations. The issue with this lack of legislative guidance is that the directors and officers of not-for-profits have a greater role in the management of the not-for-profit organization (Cumming, 1973; Gray, 2011). Furthermore, Cumming (1973) asserts that the standard of care should be higher for directors of not-for-profits as ‘members’ are not as engaged in the governance of the organization as shareholders, who have a pecuniary interest in how the corporation is governed. Members do not have the same sort of financially vested interest as the shareholders of for-profit corporations. In fact, Gray (2011) suggests that because of this, they do not become as engaged in the oversight of the corporation’s activities and so directors should be held to a higher standard because there is not as much oversight by the members.

Factor 2: The changing trends in revenue generation in the sector.

The second factor behind the rationale for the *NFP Act* was the changing trends in revenue generation within the not-for-profit sector. Eakin and Graham (2009) suggest two events occurred in succession that drastically changed the not-for-profit sector: there was a change in government financial support which then caused a response by the not-

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for-profit sector. The first event, or change, described by Eakin and Graham (2009) was external funders decreased their support of the not-for-profit sector. This resulted in the second event, which was a shift in the behaviour of not-for-profit organizations to internally replace the lost financial support (Eakin & Graham, 2009; Hirshhorn, 1997). As such, not-for-profit corporations took on the characteristics of the for-profit corporation to a greater degree.

Sports and recreation organizations were slightly different than the rest of the sector with respect to revenue sources. A survey conducted in 2003 showed that earned income through fees, goods and services and membership dues accounted for 65% of revenues of sport and recreation organizations (NSNVO, 2006). The next largest source of revenue was from gifts and donations (20%), followed by government support (12%) and other sources (3%) (NSNVO, 2006). The rest of not-for-profit sector was more reliant on external sources, the two highest revenue sources being the government (49%) and earned income (35%) (NSNVO, 2006). While sport organizations were less reliant on government funding than the rest of the not-for-profit sector, they were still affected by the decreased external funding.

The not-for-profit sector is primarily funded through the government and other government agencies; however, it also relies on two additional sources of revenue: charitable gifts, and internal revenue generation (Eakin & Graham, 2009). In the early 1990s, the Canadian government began to significantly cut back its financial support of not-for-profit corporations (Eakin & Graham, 2009; Hirshhorn, 1997). As a percentage of the country's gross domestic product (GDP), not-for-profit support decreased 4.4% between 1992 and 2007 (Eakin & Graham, 2009). As well, charitable donation revenues

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for not-for-profit corporations also declined between 1994 and 2004 (Eakin & Graham, 2009). In 1994, government support accounted for 60% of the total revenue in the not-for-profit sector, and earned income accounted for roughly 27% (NSNVO, 2006). By 2004, government support had reduced to between 49-57%, and earned income had increased to 35% of total revenue (Eakin & Graham, 2009; NSNVO, 2006). The change in the approach to revenue generation made the not-for-profit sector resemble the for-profit sector in their business activities and governance practices (Eakin & Graham, 2009).

Eakin and Graham (2009) explain that the *CCA* was initially drafted at a time when the not-for-profit sector was essentially funded from external sources and it did not have to worry about internal revenue generation. As a consequence of the change in fund sourcing, the not-for-profit sector had to increase self-generation of revenues to replace the lost external funding sources, and these restrictive regulations were thwarting and hampering their abilities to do so. The changing trends in revenue generation, combined with the drafting deficiencies of the *CCA*, eventually led to discussions surrounding the drafting of the *NFP Act*. Gray (2010) argues that the plea for new corporate legislation was a consequence of the *CCA* being outdated and failing to keep up with the changing trends in the not-for-profit sector. The introduction of the *NFP Act* was designed to make legislation governing the not-for-profit sector more relevant, to modernize it, to clarify it, and to assist the sector, which had grown into a significant sector within the Canadian economy (Burke-Robertson & Godell, 2011; Corbett, 2011b; Cumming, 1973; Gray, 2010; Gray, 2011; Prince, 2011).

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The *NFP Act* finally arrives

In this fourth and final section, the *NFP Act* will be discussed with specific references to the relevant areas to this study. Overall, the *NFP Act* is intended to modernize and make relevant the legislation for not-for-profit organizations, and to assist organizations in becoming more effective. Specifically, the drafters of the legislation intended that the *NFP Act* would make not-for-profit corporations more accountable to their members, and make their operations transparent (Corbett, 2011b; Cumming, 1973; Gray, 2011; Kitching & Wispinski, 2004). Kitching and Wispinski (2004) report that two overall themes came out of the initial discussions for the drafting of the *NFP Act*: a need for greater corporate accountability, and more operational transparency.

The two themes that came out of the drafting process are some of the fundamental goals that the *NFP Act* strives to achieve. These goals are met through the governance of the organization, specifically through the governance structure of a not-for-profit corporation in terms of the organizational hierarchy and the way in which decisions are made. The provisions set out in the legislation in terms of the composition and role of the board of directors and the voting members are the mechanisms through which the drafters' goals of accountability and transparency are achieved. For example, provisions that pertain to governance include reporting requirements, voting requirements, stipulations for who can be a director, and access to minutes of meetings and financial reports.

The key provisions for sport in the *NFP Act*

The provisions in the *NFP Act* are aimed at promoting greater accountability within the organization, and making the operations more transparent (Cumming, 1973;

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Gray, 2011). The *NFP Act*'s provisions are designed to make the directors accountable to the members who have greater rights under the legislation. Provisions of the *NFP Act* also address the process of governance, the mechanics of which are achieved through the legislative default rules and Regulations to the legislation. The following section will discuss the legislation as it pertains to the structural governance aspects of not-for-profit sport organizations, namely the provisions concerning the directors and membership, and the legislative default provisions and Regulations to the legislation.

Provisions concerning directors.

The provisions that pertain to directors of an organization's board are the key in creating greater direct accountability between the directors and the membership. This is done by limiting the appointment of directors to the board, and by granting the members greater authority over directors. The main function or purpose of the board in a not-for-profit sport corporation is strategic, which involves making critical decisions, planning, and in many cases includes the actual execution of those plans (Aguilera, 2005; Ferkins, Shilbury, & McDonald, 2009; Ferkins & Shilbury, 2011; Hoye & Cuskelly, 2007; Inglis, 1997). The board plays an integral role in the governance of not-for-profit corporations, which is why it is one of the main ways that the legislation increases accountability.

The *NFP Act* is all about accountability achieved through engaging members directly in the selection of directors, and thereby having direct input to the composition of the board. Cumming (1973) iterates that the legislation has a clear emphasis on the election of directors by members. According to s. 128(3) of the *NFP Act* (2009) "members shall, by ordinary resolution at each annual meeting at which an election of directors is required, elect directors to hold office for a term expiring within the

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prescribed period”. As well, members at an annual meeting may always nominate a director from the floor regardless of the nominations put on the ballot (Canada Not-for-Profit Corporations Act, 2009). Additionally, the members have the power to remove directors at any time by ordinary resolution (a simple majority of the votes) and the right to set and change the number of directors that make up the board of directors (Canada Not-for-Profit Corporations Act, 2009).

Board composition in national sport organizations.

The boards of federal sport organizations often represent regional jurisdictions, which is a reflection of the hierarchy of sport (Hums & MacLean, 2004). This translates to NSO boards composed primarily of members of the provincial or territorial organizations of that sport or, essentially, regional representation. This “representative-based” board promotes inclusiveness by gathering directors that collectively represent each regional group or member association (Ferkins & Shilbury, 2011; Mercier, 2012). Mercier (2012) identifies four key roles for the board that are essential to running the corporation: direction and role of the board, finance, human resources, and operations. All boards require directors with competencies in the key areas of business, but a composition focus on inclusiveness of constituents instead of on these competencies can be problematic. This is not to say that directors coming from constituent groups will not have the required skills, the issue is that the focus for board composition is not prioritized on the skills of directors. According to Corbett (2011a), the use of a constituency-based board is common for NSOs whose boards are often composed of appointed representatives from each provincial or territorial association. For example, the president of the Ontario Soccer Association, by virtue of that office, sits on the board of the

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Canadian Soccer Association (Corbett, 2011a). This method of director selection is known as an *ex officio*⁶ appointment; that is, the selection is based on the position not the person, thus members are not as involved in the selection of directors at the national level (Corbett, 2011a; Corbett, 2011b; Gray, 2011; Prince, 2011). This type of director selection has also been used to form a board composed of a very specific set of skills, i.e. a ‘competency’ or ‘skills-based’ board. The focus for this board selection method is on the attributes of the directors and with the intent of having a range and mix of skills, and vast experience in relevant management areas of sport (Ferkins & Shilbury, 2011; Mercier, 2012).

With respect to directors, the major change coming from the *NFP Act* is an attempt to put the selection of directors more directly into the hands of the members, and this will be a challenge for many organizations. Corbett (2011b) states that over one-third of NSOs in Canada have a board of directors composed of appointed (*ex officio*) directors. The legislation does not completely eliminate *ex officio* directors, nor does it even mention this term, but it does limit the number of appointed directors. The *NFP Act* allows the appointment of directors in some instances. According to s. 128(8) of the *NFP Act* (2009):

The directors may, if the articles of the corporation so provide, appoint one or more additional directors, who shall hold office for a term expiring not later than the close of the next annual meeting of members, but the total number of directors appointed may not exceed one third of the number of directors elected at the previous annual meeting of members

(Canada Not-for-Profit Corporations Act, 2009, p. 47).

This means that each year, there may only be one *ex officio* or appointed director for every three elected directors. This provision will become particularly relevant for

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organizations that use staggered terms of office for their directors. Organizations that have a proportion of director terms expiring in different years could face complications if they wish to utilize this provision to appoint a particular type of director in any given year (Prince, 2011). What this means is that if the terms of directors are staggered with terms lapsing in different years, the members may not be permitted to appoint a director in that year if the elected director ratio is not preserved.

The legislation does grant the directors with authority, but it preserves accountability by requiring the major decisions of the board to be confirmed and voted upon by the members at the next annual meeting (Gray, 2011). For example, by default the *NFP Act* preserves the authority of the directors by allowing the board to collectively amend by-laws. Section 152 of *NFP Act* (2009) states:

- (1) Unless the articles, the by-laws or a unanimous membership agreement provides, the directors may, by resolution, make, amend or repeal any by-laws that regulate the activities or affairs of the corporation, except in respect of matters referred to in subsection 197(1) – fundamental changes
- (2) The directors shall submit the by-law, amendment or repeal to the members at the next meeting of members, and the members may, by ordinary resolution, confirm, reject or amend the by-law, amendment or repeal

(Canada Not-for-Profit Corporations Act, 2009, p. 62-63).

This section shows how the legislation allows the directors some freedom to make changes while maintaining accountability to the members. The pattern of granting directors certain powers but requiring their decisions to be ratified by members is repeated in other sections in the *NFP Act*. For example, Section 133 of the *NFP Act* allows the members the right to amend the articles of incorporation to change the number of directors regardless of what was set out by the board of directors.

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Provisions concerning membership.

The literature is abundantly clear that the drafters of the legislation emphasized a more central role for members in the governance of the organization, which in turn has made the not-for-profit sector more corporate in its governance and operations (Cumming, 1973; Gray, 2011). Prince (2011) debates whether members of not-for-profits share sufficient similarities to shareholders under the *CBCA* to warrant these types of powers.

Shareholders are the owners of the corporation and have an equity stake in the corporation; that is, their investment in the corporation is financially motivated and so, on that basis, they are entitled to have a greater influence on decision-making (Gray, 2011; Prince, 2011). From this perspective, Gray (2011) says that the members of not-for-profit organizations, sport included, have less justification to be involved with decision-making and have less incentive to interfere with the management of their organization if all is running well. Regardless, the membership provisions in the *NFP Act* attempt to enhance membership rights by ensuring that members are involved in decisions that directly and fundamentally affect them.

Fundamental changes and the enhanced rights of members.

Under the *CCA*, sport organizations could give members whatever rights they wanted to, even no voting rights at all. The *NFP Act* however gives all members a vote in the event of a fundamental change to the corporation, whether the organization has assigned them rights or not (see Appendix A for the full list of what constitutes a fundamental change). Under the *NFP Act* (2009), ‘Part 13’ addresses fundamental

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changes to the corporation, and s. 197 and s.199 of the Part outline the members' voting rights in the event of a fundamental change:

197(1) A special resolution of the members (majority of not less than two thirds of the votes cast on that resolution) – or, if section 199 applies, of each applicable class or group of members – is required to make any amendment to the articles or by-laws of a corporation to... (a) through (e)

199(1) The members of a class or group of members are, unless the articles otherwise provide in the case of an amendment referred to in paragraphs (a) and (e), entitled to vote separately as a class or group on a proposal to make an amendment referred to in subsection 197(1) to (a)... (f)

(Canada Not-for-Profit Corporations Act, 2009, p. 85-86)

Gray (2011) and Prince (2011) say that with these provisions, the *NFP Act* fetters the hands of corporate management by potentially granting veto powers to minority groups or classes within the organization, thus allowing non-voting members the ability to block fundamental changes.

Prince (2011) provides a scenario which illustrates how this provision is particularly significant for sport organizations and their unique membership structure:

A not-for-profit sport organization organizes a large sports league. The sport organization has two classes of membership – one for a small core group, in this case, its directors, which are given full voting rights, and a second class for all participants in the league, including athletes, coaches and officials, who have no voting rights under the bylaws. And in this situation, the membership of the participants expires annually, but can be renewed automatically each year upon registering and paying a membership fee. Under the new legislation, the membership class of participants, even if they do not have voting rights, must be given the right to vote on changes to the corporation that affect classes of members. This means they must all receive notice of the vote and be given the chance to actually vote. As fundamental changes require a vote of all classes of members, just one class of non-voting members can have veto power over these changes (p. 5).

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More broadly, Prince (2011) is saying that every membership class designated by a sport organization will have the right to vote on any matters affecting their rights and thus may have a veto vote to any organizational initiative that fundamentally affects them. The *NFP Act* (2009) states that classes of members may vote separately or as a group, which means any membership class, big or small, can gain a veto vote that is far out of proportion to their number. A veto vote in this sense means that the power or weight of a particular membership class or group could be big enough to block certain actions of the corporation, particularly because the approval rate for a fundamental change is at least a two-thirds majority.

Membership structures and voting rights in sport.

There is a whole array of different membership structures among sport organizations. Some MSOs have no members at all, such as the Canadian Centre for Ethics in Sport and the Canada Games Council (Corbett, 2012). By contrast, some NSOs have as many as 12 membership classes, e.g., Rowing Canada Aviron, or as few as one class, e.g., Alpine Canada Alpin. The *NFP Act* does not strictly define what constitutes a ‘member’ or ‘membership’ in a not-for-profit corporation. From a legal perspective, the definition of a member and membership classes is set out in the organization’s articles of incorporation and by-laws (Cumming, 1973; Gray, 2011). Section 154 of the *NFP Act* (2009) outlines the conditions for membership:

- (1) The by-laws shall set out the conditions required for being a member of the corporation, including whether a corporation or other entity may be a member.
- (2) If the articles provide for two or more classes or groups of members, the by-laws shall provide
 - (a) the conditions for membership in each class or group;

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- (b) the manner of withdrawing from a class or group or transferring membership to another class or group and any conditions of transfer; and
- (c) the conditions on which membership in a class or group ends

(Canada Not-for-Profit Corporations Act, 2009, p. 63)

Additionally, the legislation imposes no limitations on who may be a member of the corporation, allowing not-for-profit corporations complete latitude (Canada Not-for-Profit Corporations Act, 2009; Gray, 2011). This becomes a critical area for sport due to the wide array of member definitions and what constitutes membership in the NSO. For example, in 2009 the Canadian Soccer Association (CSA) reported having 867,869 total player registrants, 23,015 registered referees, 139,420 NCCP registered coaches, and 1,505 clubs (Canadian Soccer Association, 2009). Sport organizations had to carefully consider their membership structures and definitions under the *NFP Act* because the title of ‘member’ is accompanied by specific voting rights and other entitlements.

With respect to membership voting rights, s. 154 of the *NFP Act* (2009) addresses the minimum number of voting member classes:

- 154 (3) The members of a corporation that has only one class or group of members have the right to vote at any meeting of members.
- (4) If the articles provide for two or more groups of members, the articles shall provide the members of at least one class or group with the right to vote at a meeting of members

(Canada Not-for-Profit Corporations Act, 2009, p. 64)

Under the legislation, the default provision for voting rights is that each member will be allocated one vote (CNCA, 2009). This becomes relevant for sport as many NSOs allocate votes proportionally to the size of the regional member associations. For example, Swimming/Natation Canada awards two votes for delegates with 1-500

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registered swimmers and 6 votes for delegates with 4001 or more registered swimmers.

The legislation allows sport organizations the flexibility to use a ratio-based vote allocation system. The provision for voting rights simply requires the organization to explicitly address this in their by-laws or be subject to the legislative default rule.

Legislative default rules and the Regulations.

Man (2011) states that while the legislation is prescriptive, it is a very flexible document giving wide latitude for the not-for-profit sector. The *NFP Act* contains two types of sections that provide guidance for not-for-profits: a series of ‘default rules’ which give not-for-profit corporations a degree of choice, and ‘mandatory rules’ that must be adhered to. Organizations are not required to address the default rules in their by-laws, but if they are silent on the issue then the legislative default rule applies (Burke-Robertson & Godell, 2011; Man, 2011). In addition, there are Regulations that are part of the *NFP Act*, which provide additional interpretations to help clarify the legislation, such as defining prescribed notice periods, prescribed amounts for quorum, prescribed fees and the content of financial statements. For example, the Regulations establish a 21 to 60 day notice period for a meeting of members. Notice can be by mail, courier or personal delivery to each member entitled to vote at the meeting. Essentially, the Regulations provide detailed guidance on procedural aspects of the legislation.

The default provisions are designed to assist the organization in its governance functions, increasing efficiency in the operation of the not-for-profit corporation while making the directors more accountable, and the actions of the organization more transparent (Cumming, 1973). On one hand, default rules allow the sport organization to meet its own needs but, it must be deliberate in designing its governing documents. On

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the other hand, mandatory rules are prescriptive and establish a minimum standard for all not-for-profit corporations. Man (2011) points out that, unlike mandatory provisions, some default rules give wide latitude to corporations while others are more prescriptive and place limitations on the overriding conditions. For sport, the key provisions are the ones that would assist in making the organization's operations more convenient and accessible. The geographical size of Canada can make the operation of a NSO awkward and difficult, especially in terms of the costs and time associated with communication and meetings. Table 1 provides examples of some default and mandatory rules.

Table 1 <i>Examples of NFP Act default and mandatory rules</i>		
<u>Provision</u>	<u>Rule</u>	<u>Alternative (if default)</u>
Right of members to vote (Subsection 154(5))	Each member is entitled to one vote at a meeting of members.	Articles may provide for classes of members with different voting rights, including non-voting members.
Manner of voting by members (Section 165)	Voting is by a show of hands or electronically (unless bylaws restrict electronic voting). A member that is entitled to vote at the meeting can demand a ballot.	By-laws can specify another manner of voting
Absentee voting by members (Section 171)	Not permitted.	By-laws can specify that absentee voting will be allowed by the following prescribed methods: proxy, mailed-in ballot, or telephonic, electronic or other communication facility.
Articles of incorporation (Section 7(1)(a)...(g))	Articles of incorporation shall follow the form that the Director fixes and shall set out the information in (a) through (g), such as name of corporation, province of registered office, classes of members, etc.	No alternative. Articles of incorporation must include the information set out in s.7 (1)(a) through (g).
Powers of a corporation (Section 17(1))	It is not necessary for a by-law to be passed in order to confer any particular power on a corporation or its directors.	No alternative.
Corporate records (Section 21(1)(a)...(g))	A corporation shall prepare and maintain records containing (a) through (g) at their registered office.	No alternative. Corporate records must contain the information set out in s.21 (1)(a) through (g).

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Overall, the legislation's default and mandatory rules, and Regulations, are framed around greater efficiency but, at the same time, enhance accountability to the members and maintain transparency in the operations of the organization. If the organizations do not turn their attention to the default rule, they will be subject to the prescriptions of the legislation. The *NFP Act* gives not-for-profit corporations great flexibility in choosing whether or not to go with the legislative defaults. If the organization elects to choose an alternative method to the default provision, the members are the ones who vote on the changes and can choose to move away from the default. Once again, the accountability and transparency is preserved even through the default provisions of the *NFP Act*.

Notes for Chapter II

2. Incorporation is the process for organizations to register with Industry Canada in order to gain nation-wide legal status (Federal Government of Canada, 2012).
3. RCAA status in reference to a not-for-profit corporation having charitable status under the Income Tax Act (ITA). Most NSOs are also registered charities, which enables them to issue tax receipts among other benefits. The ITA mandates further, more strict, requirements for a RCAA. Not-for-profit corporations must comply with the requirements of both the ITA and *NFP Act* (Canadian Bar Association, 2011; Corbett, 2011d).
4. Chief Executive Officer versus Executive Director – both titles are given to the senior staff manager in a corporation. Typically, the term ED has been used in the not-for-profit sector whereas CEO has been used in the for-profit sector. In general, the CEO has much greater independence and authority in the corporation, whereas an ED is typically monitored more closely by the board of directors.
5. The term *ex-officio*, in the sense of director appointment, refers to the practice of selecting someone for a position in an organization by virtue of that person's office held within the same organization or other organization. The key factor is that their selection is based on the position or title and does not involve nomination or election.

Chapter III

Research Methods

The phenomenon under investigation is NSO leaders' perceptions on the impact of legislation as they were undergoing organizational changes to comply. The purpose of this study was to explain how NSO leaders perceived the impact of the legislation (e.g., *Canada Not-for-Profit Corporations Act (NFP Act)*) on the governance structure of their respective sport organization. In particular, this study examines the implications of the *NFP Act* for the governance of sport organizations transitioning from the old legislation, the *Canada Corporations Act (CCA)*, to the new legislation. The study uses a qualitative methodology and a case study design. This Chapter discusses the theoretical framework that underpins the study and will detail the research design and method of data collection and analysis. The design of this study is guided by the following two research questions:

Research Question 1 (RQ1):

What do federal sport leaders perceive to be the mandate of the *NFP Act*?

Research Question 2 (RQ2):

How do federal sport leaders think the requirements of the *NFP Act* will impact the governance structure of their organization and, in general, affect their organization?

Use of qualitative methodology

While there are many approaches to research design, a fundamental decision for the researcher is to choose between a qualitative and a quantitative method of inquiry. Both methods have distinct strengths and the selection of one depends on the research question and the type of data the researcher is seeking to collect. The emphasis of a qualitative study is on the interpretation and understanding of the meaning of complex phenomena. Qualitative inquiry is typically viewed as being best suited for discovering

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meaning in context; that is, it involves the examination of phenomena in its own setting or environment (Denzin & Lincoln, 2005; Merriam, 1998; Stake, 1995). This study was designed to learn about the particular ramifications of the legislation on sport from the perspective of NSO leaders. Particular attention is paid to understanding the response of NSO leaders to the changes in their organizations' governance structures and how they perceived the changes would affect the organizations' governance going forward. The Research questions are aimed at understanding the impact of the legislation on sport organizations beyond the technical aspects, such as what the *NFP Act* requires for by-laws, membership structure, and board composition. The present study focuses on collecting data for interpretation, and for that reason, the qualitative methodology was better suited for answering the Research Questions.

Another contributing factor that justified the selection of a qualitative approach was the somewhat exploratory nature of the study. At the time of design, the *NFP Act* had just come into effect, so there were few sport organizations that had completed the transition process. As such, it was not possible to determine actual outcomes of the transition process and the impact the legislation actually had. With that said, the literature and the by-laws of the NSOs provided a basis for gauging how the requirements of the legislation would impact the governance of the organizations in the future. The focus on explaining how sport leaders perceived new legislative requirements rather than evaluating or testing is characteristic of an inductive approach, which is also a primary characteristic of qualitative research (Merriam, 1998). Thus, while this study is not completely exploratory and inductive, the qualitative methodology is still better suited to answer the Research Questions.

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In addition, sport organizations may be affected by the legislation in different ways. There are numerous factors that may have impacted how organizations responded to the requirements of the *NFP Act*. Each selected NSO was expected to have their own context within which they experienced the changes mandated by the legislation. Stake (1995) and Merriam (1998) point out that the qualitative researcher strives for an understanding of the complex interrelationships that affect phenomena. Factors that may affect an organization's context in this study include: governance structure, policies, organizational culture, readiness for change, the board structure used, age of the organization, and the size of the organization. The existence of so many potential influential factors adds complexity that lends further support for the use of a qualitative approach. There is rich context in which the governance of sport organizations takes place, so the legislation, while appearing to be simple, will have a differential impact on each NSO. The unique context of each sport organization will influence the way that their respective leaders perceive the impact of the *NFP Act* requirements. The qualitative approach allows the researcher to explore how all these parts interact with each other.

Theoretical framework: the socio-legal perspective

A theoretical framework is composed of concepts or theories that support a researcher's orientation towards his or her study (Merriam, 1998). The following section will outline the theoretical rationale for the study, followed by a discussion of the relevant concepts underlying the design of this study. First, the socio-legal perspective will be discussed.

The present study is placed within the sport management discipline but assumes a socio-legal perspective. The legislation is an institution of law, and serves as a key data

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source for the study. The other key source of data is the perceptions of individual respondents about the legislation's impact. The Research questions that guide this study are written in a way that targets the social impact of the law as observed through the perceptions of people; therefore, a socio-legal perspective is well suited to support the design of this study.

The socio-legal perspective originates from within the domain of legal studies, specifically, the sociology of law. Travers (2010) defines the sociology of law as the relationship between law and society. He further states that a socio-legal framework is well suited for “examining the relationship between large, complex institutions such as a legal system or a political system, and understanding how each shapes the actions of individuals” (Travers, 2010, p.116). The *NFP Act* is part of the federal legal system that governs the business or government activities of corporations. The legislation was drafted with specific outcomes in mind, which are to make the operations of corporations in the not-for-profit sector transparent and to increase the level of accountability of directors to their members and organization. The study sought to understand how the goals of the legislation translated to the context of NSOs from the perspective of the leaders within such organizations. The study looks at the translation of theory to practice, that is, the theoretical intention of the legislation and how its intent is actually being perceived by those affected by it. By examining how sport leaders perceive the legislation's impact, this study looks to determine a relationship between the general intent of the legislation and how it was perceived to have influenced their approach to the operations of the leaders' NSO.

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The law as a social institution influences, reflects and shapes the behaviour of society. National sport organizations are social institutions and consequently, corporate legislation will shape the way they operate, or ‘behave’. The *NFP Act* provides uniform regulation for the business activities of not-for-profit corporations, and specifically obliges such organizations to operate in a way that ensures greater accountability to its membership and ensures that their operations are transparent. For example, the legislation awards the members of a corporation with significant decision-making authority and results in them being able to hold directors more accountable for their actions.

Within the socio-legal framework, there are three main approaches to analyzing and interpreting the law: an internal approach, a moral approach, and an external approach (Deflem, 2008). An internal approach is used to examine the efficiency of law. This includes the study of jurisprudence, the science and philosophy of law, and training in the practice of law (Deflem, 2008). A moral approach, often called a philosophical approach, is typically used to evaluate or justify particular aspects of the law by examining the moral rationale behind the creation of law (Deflem, 2008). This includes the historical study of law and examining the philosophical rationale that justifies a law. Finally, the external approach to the study of law involves using empirical methods to examine the characteristics of existing systems of law (Deflem, 2008). This includes studying the law using observation or other methods. This study uses an external socio-legal approach as the purpose is to explain the perceptions of sport leaders concerning the impact of the legislation on the governance structure of their organization, the evidence for which will be collected through qualitative interviews (a source of observational evidence).

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Case study methodology

The case study is one of the most commonly used methods of inquiry in both qualitative and quantitative research across multiple disciplines (Willis, 2007; Yin, 2003). Many authors agree that case studies are particularly useful for investigating and understanding complex social phenomena and for gaining a holistic and meaningful view of real-life events (Merriam, 1998; Stake, 1995; Yin, 2003). The case study methodology is well suited to the focus of this study; that is, to gain a holistic view of the impact of the legislation from the perspective of national sport leaders.

The phenomenon under investigation is dynamic in that it was examined while the subjects were actually experiencing and dealing with the effects of the phenomenon. According to Yin (2003), use of a case study is useful for investigating contemporary events, especially where the behaviours of participants cannot be manipulated, or when the researcher does not want to manipulate any variables which may affect behaviours and create a false reality. The research subjects used in this study were NSOs currently undergoing organizational changes to comply with new legislation. The core purpose of this study was to explain how sport leaders perceived the mandate of the legislation at the time of data collection, based on what they knew of the legislation and the changes their organizations had to make or were planning to make. In addition, since this study examined the phenomenon as it was happening, there was an element of exploration. Yin (2003) states that case studies have typically been thought of as appropriate for the exploratory phase of an investigation, but also states that the methodology can be adapted for both description and explanation phases of an investigation. The goal of this study is

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not confined to exploration, description, or explanation, and in fact, incorporates all three elements.

The study aims to examine the impact of the legislation from multiple perspectives. The expectation was that collecting perspectives from multiple individuals holding different positions and coming from different organizational contexts would yield rich data. Merriam (1998) says that “the case study design is employed to gain an in-depth understanding of the situation and meaning for those involved...the interest is in process rather than outcomes, in context rather than a specific variable, in discovery rather than confirmation” (p. 19). The novelty of this study corresponds with a research purpose of exploration and discovery, and aligns with the utility of the case study methodology.

The single-case versus multiple-case study research design.

A fundamental decision for a researcher using the case study methodology is whether to employ a single-case or multiple-case study design (Yin, 2003). The selection of either design will depend on the research question and the phenomenon under investigation. Both case study designs have distinct advantages and the circumstances under which each design type is best used is discussed below.

Yin (2003) identifies five case situations where the use of a single-case study design is best: a critical case used to test well-formulated theory, an extreme or unique case, a representative or typical case, a revelatory or previously inaccessible case, and a longitudinal case. The common theme among the five situations is that a single case with specific qualities will most effectively answer the research question.

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Similarly, there are distinct advantages for the use of a multiple-case study design. According to Yin (2003), such a design is best suited for comparative studies or when the same study contains multiple subjects. A number of authors agree that the evidence from multiple cases can be more compelling and may be regarded as being more robust, valid, credible, or transferable (Creswell, 2007; Merriam, 1998; Yin, 2003). The key indicium for using multiple cases is where the difference(s) between various cases is important for answering the research question. For example, the different contexts of each NSO may affect how the sport leaders perceive the impact of the legislation if their organization is affected differently by the requirements of the *NFP Act*.

Both case study design types have limitations. The greatest limitation of a multiple-case study design is that it usually requires extensive resources and time, both of which are often beyond the means of a single investigator (Yin, 2003). There is a risk that data from multiple cases may lack depth but data depth is a key characteristic of a single-case design. There may be substantial analytical benefit from having two or more cases, inasmuch as the analytic conclusions arise independently from two cases and may thus be more powerful as the contexts of two cases are likely to differ to some extent (Yin, 2003).

This study used a single-case study design as this type is better suited for developing an in-depth investigation of a unique phenomenon (Yin, 2003). Each leader brought their own views and feelings about the legislation; however, their perceptions were contextualized by the characteristics of the sport organization from which they came. The context of each NSO contributed to the depth and richness of the data as these characteristics, or case descriptors, contributed to and informed the responses of the

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interview respondents. The level of depth and richness required for this study provided further justification for a single-case study design. Multiple NSOs were included and were represented by one to three respondents. Each NSO had distinguishing organizational characteristics that likely influenced the perceptions of the sport leaders concerning the impact of the legislation. While these organizational characteristics differentiate the NSOs as separate research subjects, the focus of this study is on how leaders perceive the impact of the legislation on NSOs as a group and not necessarily on the differential impact on each sport organization. National sport organizations represent less than 1% of not-for-profit corporations, which makes them a unique group within the affected not-for-profit sector.

The final sample consisted of 21 Respondents coming from 11 NSOs. All but three NSOs were represented by two interview participants. Due to availability, two NSOs were represented by a single participant. One NSO was represented by three participants because there were three key people involved with their organization's transition; the senior staff member recommended that all be interviewed. Each interview lasted between 25 to 90 minutes totalling 15.75 hours of recorded audio data that yielded 489 pages of transcript.

Selection of NSOs

For the purposes of this study, the sample population consisted of 60 national sport organizations (NSO) that are federally incorporated and federally-funded (A full list is found in Appendix B).

When using multiple respondents in a case study, "each case must be selected for a specific purpose within the overall scope of the study" (Yin, 2003, p. 47). Yin (2003)

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identifies replication logic as the strategy used for selecting cases in a multiple-case study design. While this study is not a multiple-case study, replication logic can still be used to select from the multiple NSOs in the sample population. Replication logic is analogous to conducting multiple experiments as specific experimental conditions for one case are duplicated for a second, third, or more cases (Yin, 2003). Replications can be done in one of two ways. Either each case is carefully selected so that it predicts similar results, such as an experiment that manipulates variables whilst keeping the test subject constant. This is known as a literal replication. Alternatively, each case can be selected so that it predicts contrasting results. This is known as a theoretical replication (Yin, 2003). While this study was not designed to actually predict any specific outcomes or results, replication logic was applied in the sense of purposefully selecting the sample to include NSOs with different organizational characteristics.

According to Yin (2003), six to ten “cases” will allow sample diversity and provide compelling support for most theoretical propositions. This rationale was applied to this single-case study when selecting research subjects (the NSOs). Given the constraints of this study, the total sample population of 60 NSOs was reduced using a specific set of criteria that is described in the following section. The goal for the study’s sample selection was to have rich data that is diverse in the sense of being representative of many types of organizational characteristics. Since the sample population was so large, the minimum number of NSOs selected for this study was set at the high end suggested by Yin (2003), or ten organizations with an additional organization allocated for a pilot study. The data collected from the interviews of the pilot study were used as part of data analysis. Selecting NSOs based on their specific characteristics and their

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ability to provide rich information is known as purposeful sampling (Merriam, 1998). To begin purposeful sampling, criteria for selection must be defined and explained (Merriam, 1998).

Respondents from selected NSOs.

The focus of this study was on the perceptions of national sport leaders. Ideally, it was planned that each NSO would be represented by two individual leaders as interview respondents. According to Weiss (1994), it is beneficial to use multiple respondents who together can provide rich data to answer the study's research questions. Weiss (1994) goes on to explain that "interviews should be held with people in different jobs on different levels, in different relationships to the institution, and from different informal groups" (p.19). Each sport leader brought their unique perspective to reveal the impact of the legislation within the context of his or her sport organization.

Accordingly, the sport leaders that were recruited to participate in this study held different positions within each NSO: one board member or other key volunteer that was most actively engaged in the transition process, and one executive officer or manager of the organization. Essentially, the distinguishing characteristic between respondents from the same NSO was that one was paid staff whereas the other was an executive volunteer. Each leader had a different role and relationship to the organization, which provided two different perspectives for each selected NSO. Ultimately, to answer the Research Questions, interviews needed to be held with the organizational executives and with leaders who possessed the knowledge of how their organization was responding to the requirements of the legislation. Despite the plan for respondent recruitment, only eight NSOs were represented by a complete 'set' of respondents; two NSOs provided only the

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senior staff person to participate, and one NSO provided an additional executive volunteer bringing the total number of interview respondents to 21 (11 senior staff and 10 executive volunteers).

Characteristics of the sample population.

The following section refers to cases in the sense of a multiple-case study design. For the purpose of this study, the reference to a “case” with respect to selecting research subjects is in reference to the NSOs that are affected by the legislation, which is not to be confused with the case or phenomenon under investigation. The criteria for the selection of NSOs were designed to ensure organizations having to make some changes to their governance structure were identified. It was assumed respondents from such organizations would provide richer data than those coming from organizations making few or no changes. Such cases are known in both qualitative and quantitative inquiry as a negative case (Patton, 1990; Yin, 2003). Although a negative case may yield less rich data, it was expected that they may nonetheless provide alternative insights about the mandate of the legislation. As such, one negative “case”, or an organization not required to make changes in the two key areas, was included in the final selected sample.

Before the NSO selection process, the relevant organizational characteristics for each potential sport organizations were identified and charted in Appendix B. These were derived from the review of literature and consisted of the areas that are directly related to the impact of the legislation, that is: anticipated changes to director selection and membership rights, board composition, total number of appointed and elected directors, whether the directors were primarily elected or appointed, board size, and number of non-voting and total number of membership categories.

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Board size was identified as small, 12 or fewer directors, medium, 13 to 18 directors, or large, 19 or more directors (Bell-Laroche, 2010). Beyond size, board composition was determined to be important as it was the organizational characteristic that most accurately described the governance style of an NSO. Board composition was labelled as either “competency” or “representative”. In her study, Bell-Laroche (2010) used the terms “policy” and “representative” to describe the board composition, whereas Ferkins and Shilbury (2011) use the terms “competency” and “representative”. Both sets of terms are similar and create a similar dichotomy that describes whether the board composition is focused on having regional representation from among the NSO’s constituents, or a composition of diverse qualifications and professional skills. For the purposes of this study, the terms used were “competency” and “representative”.

Rationale for NSO selection emphasis.

The legislation targets two primary areas to achieve its goals: director selection and membership rights. Selection criteria were thus based on two assumptions based on the expectation that NSOs would make changes to these organizational characteristics, specifically director selection methods and membership categories. With respect to directors, the *NFP Act* emphasizes the election of directors by limiting the number of *ex officio* appointments to the board. The legislation permits only one *ex officio* appointed director for every three elected (Canada Not-for-Profit Corporations Act (CNCA, 2009). So, if an organization’s director selection methods were in violation of this ratio, they would be required to modify how their directors are selected to the board. With respect to members, the *NFP Act* awards voting rights to all classes of members, regardless of the NSOs by-laws, in instances involving fundamental changes. Thus, any NSO with non-

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voting membership classes that wants to avoid this scenario would have to make changes to their membership structure; resulting in the label “changes required to membership rights”, even though this is not actually a direct requirement of the *NFP Act* and is more so an indirect effect.

The initial overriding criterion for selection was that all selected organizations were a federally-incorporated not-for-profit sport organization. This is fundamental as it identified which corporations were subject to the legislation and thus of interest to the study. The *NFP Act* applies only to not-for-profit corporations that are federally incorporated. Multi-sport service organizations (MSO) were excluded from this study as their organizational structure and membership base is not quite the same as NSOs, which may have affected the study’s results because of the different type of membership structure. Also, not-for-profit corporations that are not sport organizations were not included in the study’s sample. Prior to selection, organizations were categorized, based on the previously outlined assumptions, as needing to make changes in director selection (DS), membership rights (MR) or both as set out below in Table 2 below.

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Table 2			
<i>Change requirement groupings of NSO population</i>			
<u>Changes required to director selection (DS) & membership rights (MR):</u>			
Archery	Cricket	Lacrosse	
Baseball	Curling	Luge	Table Tennis
Basketball	Equine	Rowing	Taekwondo
Biathlon	Field Hockey	Skate Canada	Triathlon
Bowls	Football	Snowboard	Water Polo
Boxing	Gymnastics	Soccer	Wheelchair Sports
CP Sports (Boccia)	Hockey	Softball	Wrestling
<u>Changes not required to director selection (DS):</u>			
Athletics	Golf	Squash	
Badminton	Judo	Swimming	
Cross Country	Karate	Synchro	
Cycling	Ringette	Tennis	
Diving	Sport Parachute	Volleyball	
Fencing	Speedskating	Wheelchair B-ball	
<u>Changes not required to membership rights (MR):</u>			
Alpine	Blind Sport (Goalball)	Freestyle	Shooting
Bowling Ten-Pin	Broomball	Racquetball	Weightlifting
Bowling Five-Pin	Canoe Kayak	Rugby	
<u>Changes not required:</u>			
Bobsleigh/Skeleton	Waterski/Wakeboard		Yachting (aka Sail)

Selection criteria and number of NSOs selected.

Ten organizations were selected for this single-case study. The final sample for this study met the following selection criteria:

1. all federally incorporated not-for-profit sport organizations;
2. a total of 6 NSOs required to make changes to both director selection and membership rights;
3. a total of 3 NSOs only required to make changes to either director selection or membership rights;

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4. one NSO not required to make any changes to director selection or membership rights;
5. one additional NSO matching selection criteria #2 used for the pilot study

Using the five selection criteria, the NSOs from Table 2, and organizational characteristics in Appendix B, Table 3 lists potential NSOs for this study:

Table 3					
<i>Example of NSO Sample using case selection criteria</i>					
<u>Criteria #2</u>	<u>Board size</u>	<u>Board structure</u>	<u>Primary selection</u>	<u># Non-voting member classes</u>	<u>Membership size</u>
Soccer	Large	Representative	Appointed	2	VL
Baseball	Medium	Representative	Appointed	2	L
Biathlon	Small	Competency	Appointed	2	M
Luge	Medium	Competency	Appointed	3	VS
Triathlon	Medium	Competency	Elected	2	S
Softball	Small	Competency	Elected	4	L
<u>Criteria #3</u>					
Athletics	Small	Competency	Elected	4	M
Cycling	Small	Competency	Elected	3	M
Fencing	Small	Competency	Elected	2	S
<u>Criteria #4</u>					
Bobsleigh	Small	Competency	Elected	0	VS
<u>Criteria #5</u>					
Cricket	Medium	Representative	Appointed	4	M

Note. Parameters for organizational characteristics from Bell-Laroche (2010). Board size classed as follows: small (12 or fewer directors), medium (13-18 directors), and large (19 or more directors). Membership size classes as follows: very small (significantly < 20,000 members), small (20,000 members), medium (20,001 – 199,999 members), large (200,000 members), and very large (significantly > 200,000 members).

Data collection procedures

This section will discuss the methods used for data collection and analysis. Two methods of data collection were used: content analysis and qualitative interviewing. Two

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sources of data, beyond the review of literature, were used to answer the Research Questions: a review of pertinent documents and qualitative interviews with leaders from the selected sport organizations. The documents that were analyzed included legislation, i.e., the *NFP Act* and the *CCA*, and the most current by-laws in effect for each subject NSO prior to the legislation coming into force. The by-laws provided the background and context for each NSO selected, and formed the basis for the ‘case briefings’ created for each NSO prior to conducting interviews. A sample case briefing can be found in Appendix C. The second source of data came from the responses of sport leaders to the semi-structured qualitative interviews.

Content analysis.

Content analysis is a research technique typically used to extract meaning and inferences from text-based sources of data (Krippendorff, 2004). The documents from which the content analysis derived its data included the *Canada Corporations Act* (1970), the *Canada Not-for-Profit Corporations Act* (2009), and the by-laws of NSOs. These text-based sources were carefully reviewed for specific content relating to organizational structural elements that have an impact on governance. This content analysis was conducted prior to the interviews and in fact, it was conducted simultaneously as the review of literature as it was necessary to understand both statutes prior to designing the study.

The *CCA* (1970) was reviewed in order to understand the former requirements for NSOs prior to the new legislation coming into effect. The information collected from the *CCA* (1970) was later compared to the *NFP Act* (2009). The *NFP Act* was studied in-depth to gain a holistic understanding of the requirements of the legislation and to

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identify the provisions that were anticipated to have a direct impact on the governance of NSOs. These provisions were analyzed in the review of literature. In addition, the provisions that were anticipated to be of particular interest to sport, given the analysis of their by-laws, were also identified. The by-laws of the entire NSO population were reviewed and used to build a table (Appendix B) that summarized all of the organizations' profiles. The summary of NSO profiles was intended to highlight the elements of governance that would be affected by the requirements of the *NFP Act*. These profiles were used to create the case selection criteria, and were used to create the case briefings for the selected NSOs in the study.

Qualitative interviews and qualities of participants.

The second method used for data collection was qualitative interviewing. Kvale and Brinkmann (2009) state that “the qualitative research interview attempts to understand the world from the subjects' point of view, to unfold the meanings of their experiences” (p.1). Particularly for this study, qualitative interviewing was useful for learning what people perceive and how they interpret their perceptions (Weiss, 1994). Weiss (1994) also claims that qualitative interviewing is useful when research goals involve the integration of multiple perspectives of phenomena, in particular when multiple perspectives are required for a greater understanding. This study acquired the perspectives of key people within sport organizations in order to gain a complete understanding of the perceived impact of the legislation for national sport organizations.

The interviewees possessed characteristics which enabled them to provide relevant data to answer the Research Questions (namely their position in the NSO and role in its transition). The interview Respondents were chosen based on their familiarity

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with the legislation and their level of involvement with their organization's transition.

Initially, the Respondents were recruited based on the assumption that the most senior staff member, usually the CEO or ED, and the leading director on the board, presumed to be the President or Chair, would be leading the NSO's transition. Using the contact information posted on the NSOs webpage, the senior staff and executive board member were sent a letter of invitation (see Appendix D) via email and, where necessary, a follow-up telephone call. From this initial contact, it was determined whether they fit the interview participant selection criteria of being directly involved in their NSO's transition to the *NFP Act*. If not, they were asked for a referral to the leader who was most involved in the NSOs transition.

Ethical considerations.

Prior to conducting the interviews, ethical considerations were addressed with specific attention to maintaining interview Respondents' right to privacy, informed consent, and issues of confidentiality. In response to these ethical considerations, University Research Ethics Board (REB) approval for the study was obtained. Consent forms were used to inform the research participants of the purpose and nature of this study (the letter of informed consent is found in Appendix E). In addition, ethical considerations were verbally explained to each participant and verbal confirmation of consent to participate was obtained from each Respondent. Right to privacy was addressed through the use of pseudonyms for the names of participants and of the sport organizations. Pseudonyms are code names or numbers, known only to the researcher, that hide the identity of interview participants and are used in the reporting of results (Weiss, 1994). Access to the actual names of the interview participants and their

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respective organizations are secured and access strictly restricted to the researcher and the thesis supervisor.

Interview design.

Merriam (2009) identifies three types of qualitative interviews: highly structured or standardized, semi-structured, and unstructured or informal interviews. The three interview types may be considered as part of a continuum of interviews from highly formalized to completely informal. In the structured interview, every aspect of the interview is predetermined, including the order and exact wording of the questions. This can be contrasted with the unstructured interview, which is exploratory and open-ended. Indeed, unstructured interviews may be considered more akin to an informal conversation, rather than a focused research method. The semi-structured interview is a mixture of the other two. In a semi-structured interview, the general interview guide and question areas are predetermined but conversational tangents and improvised follow-up questions are common practice. This study utilized semi-structured interviews as this type of interview provides a balance between free-form exploration and focused pre-established direction in collecting information on a certain point (Merriam, 2009).

The first step in creating the interview questions for the semi-structured guide was breaking down each Research Question to establish what types of questions were necessary to answer them. To do this, I looked at the major issues and areas of impact discovered in the review of literature and from the first stage of data collection, the content analysis of documents. To answer RQ1, broad questions were necessary to get a feel for the attitudes towards the legislation itself, and to get a sense of where the NSO was in the transition. To answer RQ2, the questions needed to be more structured to get at

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the changes required by the legislation and that would have an impact on the governance of the organization. In the end, I created a detailed semi-structure guide that was used for the pilot study (as shown in Appendix F).

Merriam (2009) and Weiss (1994) suggest initially using a pilot interview to evaluate the quality and usefulness of the interview design, and to learn what needs to be omitted or added in the final interview script. For this study, a pilot interview was conducted in order to test questions and see if the interview script and wording of questions was prompting responses that could address the Research Questions. After the pilot study, I found that the wording of some of the questions was too rigid and needed to be simplified to allow for broader interpretation. To address this concern, I created an interview guide that was focused more on the general principles of questions, which allowed more freedom for asking questions whilst still addressing the essence of the question without getting bogged down in the phraseology of the question; I called the second iteration of my interview guide the refined practical guide (found in Appendix F).

The initial goal for interview length was between 60 minutes to 90 minutes (Weiss, 1994), allowing Respondents to thoroughly answer all interview questions, and go off on tangents without being cut off. In general, a natural ending point for an interview is when the interviewer encounters diminishing returns or when the information is redundant or peripheral to the central research questions (Kvale & Brinkmann, 2009; Merriam, 2009; Weiss, 1994). The majority of interviews were between 40 to 60 minutes, only two exceeded or fell short of this duration range (one at 90 minutes and another at 25 minutes).

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Interviews were expected to be conducted face-to-face and recorded using a digital voice recorder. In the end, 12 interviews were conducted face-to-face. Because of geography and scheduling, the other 9 interviews were conducted via telephone and recorded on the same digital voice recorder through a phone relay. Within a day of completion of each interview, the digital audio recording of the interview was transcribed verbatim to capture the factual account of the conversation. A professional transcription service was used to transcribe 18 interview recordings. The remaining three were transcribed by the researcher. The transcriptions done by the professional service were each verified for accuracy by the researcher. Each interview transcription was later edited to be semi-verbatim to improve the legibility. Semi-verbatim refers to the level of detail in the transcription process whereby the pauses and filler statements, such as “um”, are omitted and sentence structure is added where needed (Weiss, 1994).

Data analysis and reporting

Coding is the method most commonly used to organize interview transcripts and other large volumes of text-based data. Coding is the process of categorizing data that facilitates analysis (Kvale & Brinkmann, 2009). After all of the interview recordings were transcribed and before coding, I took steps to systematically setup the first stages of data analysis. The steps were as follows:

- Created a “code book” that lists and explains codes used;
- Created a “coding process” to ensure researcher consistency;
- Learned Microsoft OneNote and then uploaded interview transcriptions;
- Used the “coding process” to code interview transcriptions;
- Sorted coded data according to how they related to the research questions; and;
- Re-sorted the codes based on the themes that were established from the data.

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The coding stages of data analysis.

The “code book” was an essential tool for data analysis and was constantly referred to during data coding to ensure consistency across the 21 interview transcriptions. Before coding, the code book was comprised of the pre-set codes, otherwise called *apriori* codes, which were derived from the literature and content analysis. There were 26 *apriori* codes composed of eight main codes and 18 sub-codes that were specific topics referenced within the main codes. The main code topics were identified as follows: transition status, attitude, not-for-profit sector characteristics, sport-specific issues, mandate of the legislation, changes to the board, changes to membership, and operational or procedural changes (code book is attached as Appendix G).

The coding process was created so that there was a systematic approach to analyzing the qualitative data. This process ensured that each transcript was approached in a consistent manner. It helped to keep the data organized making the next steps of data analysis easier to transition to (the coding process is attached as Appendix H). The coding process occurred simultaneously with data collection because it took four months to interview all of the Respondents. The coding process created consistency in the data analysis (coding) over the long duration of data collection.

The computer software used for data coding was Microsoft OneNote, which is word processing software ideal for categorizing and organizing large volumes of data. OneNote allows the creation of ‘notebooks’ that house ‘sections’ (displayed as tabs along the top horizontal axis), and within each ‘section’ you can create multiple pages (displayed along the right vertical axis in the window). OneNote made organizing the codes straightforward, and allowed for the addition of emergent codes as the process

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went on. The main codes, whether *priori* or emergent, were each given a separate ‘section’ tab and the sub-codes were each given a separate page. The eight main *apriori* codes were each given a colour (seen in the code book) that corresponded with a ‘section’ colour tab in OneNote. When coding the transcriptions, sections of text were highlighted using the corresponding colour in combination with the five letter abbreviation for the code. Each time a section of text was coded it was isolated and copied into that code’s page. In this way, it was possible to look at all of the quotes for every individual code and sub-code. See Appendix I for an image of this method of coding and organization.

After coding all of the interview transcriptions, the codebook was re-organized and sorted into the three main themes arising from the data. By re-organizing the codes as they related to the main themes, analysis of the raw data was made easier as the information was already sorted into individual code pages for easy reference (see Appendix J for sample of data coded). Below, Table 4 displays the *apriori* and emergent codes grouped by the three major themes.

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Table 4	
Data analysis codes broken down by themes	<i>[emergent codes italicized]</i>
<u>Theme 1 - Intent of the Act</u>	
[MNDTE] – perceived intent	<i>[STQUO] – maintain status quo</i>
[ACCTB] – accountability	<i>[FLXBL] – flexibility of the Act</i>
[TRANS] – transparency	<i>[EFCNT] – efficiency in operations</i>
[MODRN] – modernization	<i>[NOCHG] – no change, no difference</i>
<i>[WRKAR] – “workarounds”</i>	<i>[NOCHG1] – pre-existing accountability</i>
<i>[CTLST] – catalyst for change</i>	<i>[NOCHG2] – pre-existing transparency</i>
	<i>[NOCHG5] – no effect on daily operations</i>
<u>Theme 2 - Membership categories</u>	
[MEMBR] – enhanced rights of members	[NMFLR] – nominations from the floor
[1MBCL] – reducing membership classes	[PROXY] – proxy and absentee voting
[FNDCH] – fundamental change provision	[MBMRR] – new member abilities
[TERMS] – terminology/definition changes	<i>[CLRTY] – the Act clarifies who’s a member</i>
[DEFLT] – operational/procedural changes	<i>[NOCHG4] – a simple terminology change</i>
<u>Theme 3 - Director selection</u>	
[BOARD] – changes to director selection	[REGRP] – regional representation
[BDTYP] – board model	[TECHN] – technological advancements
[ELCTD] – primarily elected vs. appointed	<i>[NOCHG3] – no impact on governance</i>
[ATHLD] – athlete directors	<i>[OBCLB] – “old boys club”, protecting seat</i>
[RECRT] – director recruitment	
<u>Outlier codes</u>	
[TRNST] – transition status	<i>[GOVRV] – recent governance review</i>
[ATTID] – attitude and approach to transition	<i>[MBENG] – member engagement</i>
[MIN] – minimal compliance and move on	<i>[TRUST] – issues of trust within the org</i>
[MED] – indifference or neutral	<i>[RSPBG] – Respondent background</i>
[MAX] – opportunistic	<i>[LGLEX] – legal background</i>
[NFP4P] – not-for-profit sector qualities	<i>[MGMEX] – executive, business</i>
[SPORT] – uniqueness of sport organizations	<i>[SPMAX] – sport management background</i>
<i>[BURDN] – busy work, a burden,</i>	<i>[UNRLD] – unrelated, non-sport/business</i>
<i>[YREND] – year-end of 03/31 may not work</i>	

Quality and rigor in qualitative research design

Research validity is typically used in the context of quantitative research and describes the quality and rigor of a research study’s design (Kvale & Brinkmann, 2009; Yin, 2003). In qualitative study, a parallel concept is used and is referred to as

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trustworthiness (Guba, 1981). Trustworthiness involves taking measures to increase the robustness of the research design. The aspects of trustworthiness that apply to this study are identified by Lincoln and Guba (1985) as credibility, dependability and consistency.

Thomas and Magilvy (2011) state credibility takes place when others can recognize the experiences contained in the study and that it is representative and reasonable. This study used triangulation to establish credibility, which involves using multiple data sources to produce understanding. Data was triangulated from four sources of data: the literature, legislation, NSO by-laws and qualitative interviews with sport leaders. Yin (2003) says that triangulation is a significant strength of case study data collection, specifically using data triangulation of sources to examine the consistency of different perspectives. Another technique of triangulation that this study used to establish credibility was via methodological triangulation. The data was collected through the use of two methods: qualitative interviews and content (document) analysis. Both legislative documents, the *CCA* and *NFP Act*, provided data that informed and supported the other data sources (i.e. the by-laws and interviews). The combination of all four data sources yielded rich data for analysis. Multiple sources of data provide multiple measures of the same phenomenon, which addresses problems of construct validity (Yin, 2003).

The second component of trustworthiness that this study used was dependability. Dependability takes place when the methods and findings can be followed by another researcher, through an audit trail. Thomas and Magilvy (2011) provide a list of techniques for establishing the audit trail, all of which were achieved in the study:

- Describe the purpose of the study;
- Discuss why and how the participants were selected for the study;
- Describe how the data were collected and how long the data collection lasted;
- Explain how the data were reduced or transformed for analysis;

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- Discussing the interpretation and presentation of the research findings; and;
- Communicate the specific techniques used to determine the credibility of the data.

The final component of trustworthiness that this study met is consistency.

Consistency is concerned with reliability and minimizing the errors and biases in the study. Tracey (2010) describes this concept as 'sincerity', meaning that the researcher is honest and transparent with regard to his or her biases, goals, and faults, in addition to how these factored into the methods and data collection. Consistency, or sincerity, was addressed through the use of a research journal that was kept during data collection (Yin, 2003). The journal included the researcher's initial assumptions, reflective judgements, and any unexpressed thoughts or observations during, before, or after each interview (Willis, 2007). The journal provided useful information that improved the interview guide. For example, the journal showed that I was inserting myself into the interviews when discussing the intent of the legislation. My bias and perceptions of the intent of the legislation was being forced on the Respondents with a loaded question, such as explicitly stating that accountability and transparency were the goals of the legislation. The journal helped identify this tendency and helped remove researcher bias during data collection. In addition, the initial assumptions and reflective judgements recorded in the journal served as the basis for data analysis.

Verification strategies to increase reliability.

Verification of the quality of the data is one of the most important stages as it addresses the integrity of the research design and findings (Kvale & Brinkmann, 2009). Morse, et al. (2002) discuss various verification strategy options that can increase the

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quality and reliability of a qualitative study, three of which were used in this study: methodological coherence, appropriate sample, and collecting and analyzing data concurrently.

The first verification strategy, methodological coherence, involves making sure that the methods match the purpose of the study. Morse, et al. (2003) explains that this strategy ensures “that there is congruence between the research question and the components of the method...the interdependence of qualitative research demands that the question match the method, which matches the data and the analytic procedures” (p. 18). This study was meant to gather the perceptions of sport leaders regarding newly enacted legislation through semi-structured interviews questions. The case study is ideal for exploratory cases and the use of semi-structured qualitative interviews with sport leaders was the best mechanism for collecting the perspectives of NSO leaders (Yin, 2003). The Research Questions centred around the legislation and for this reason, the methods included a content analysis of the new and previous legislation.

Morse, et al. (2002) further suggests that "a good qualitative researcher moves back and forth between design and implementation to ensure congruence among question formulation, literature, recruitment, data collection strategies, and analysis" (p. 17). During the early stages of data collection, specifically during the pilot and initial interviews, reference was repeatedly made back to the research design to ensure consistency with the Research Questions and purpose of the study. Improvements to the interview questions and semi-structured guide were made during data collection. The phraseology and order of the interview questions was crucial to acquiring the relevant responses of Respondents. The pilot study was the first mechanism used to verify the

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interview strategy and which precipitated changes to the interview guide. The original pilot interviews showed that my interview questions were yielding superficial responses. This helped identify a problem and by re-focusing the interview questions, the interview guide was improved.

The second verification strategy used was addressing the appropriateness of the sample, which refers to including participants who possess the knowledge of the research topic. The research topic is perceptions of sport leaders of the impact of the *NFP Act* on the governance of NSOs. The key aspects of this topic include the legislation, organizational structure of NSOs, and the perceptions of sport leaders. An important aspect of the topic is examining the impact, which involves looking at comparators such as previous statutes and NSO by-laws in effect prior to the *NFP Act*. These key aspects of the topic are addressed in the data sources and each, in turn, has directly contributed data relevant to the focus of this study and the Research Questions. Additionally, Morse, et al. (2002) state that this strategy involves ensuring that there is sufficient data evidenced by saturation and replication, thus yielding quality data and minimum repetition. Tracey (2010) states that there is no established quantity that equates to a certain level of quality, rather, the most important factor is whether the data will provide for and substantiate meaningful claims. Tracey (2010) states that the number and length of interviews, as well as the appropriateness and breadth of the interview sample, demonstrates rigor in qualitative interviewing. The study's sample represents 18% of all affected NSOs and includes a variety of organizational characteristics, which contribute to the quality of the sample. In addition, the majority of NSOs were represented by two leaders, each holding a different position in the organization, providing multiple perspectives within each

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selected case. The authors also add that seeking a negative case is an essential aspect of this verification strategy (Morse, et al., 2002). A negative case was included in the study's design and is part of the case selection criteria. For this study, the negative case was a NSO that was not required to make structural changes to comply with the *NFP Act*.

The third verification strategy used was collecting and analyzing the data, which concurrently forms an interaction between the study's design and the resulting data that will continually improve the quality of the study. The interviews were conducted over the span of four months, transcription and coding took place throughout the duration of the interviews. The interview recordings were transcribed and coded in batches of four to six at a time, as opposed to waiting until all were complete before beginning data analysis. This strategy allowed improvement in interview skills and refinement of the question phraseology based on the analysis of the data obtained from earlier interviews. By simultaneously analyzing and collecting data, gaps in the information being sought could be identified, and adjustments made to the interview questions if further clarification or elaboration was needed.

Other strategies to improve rigor of the data were implemented. For example, prior to data analysis, the interview data was member checked with the Respondents. Member-checking is the process of gaining approval and confirmation of the accuracy of data by the interview participants (Willis, 2007). The interview transcriptions were sent to the respective participants to verify the accuracy of the information collected (Willis, 2007). The rationale for allowing Respondents to review their interview transcript was twofold: 1) the interviews were transcribed semi-verbatim and thus not exactly written as spoken; and 2) clarification of what they said and if that was intended.

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During transcription, many filler words, stutters, or repeated words were removed to make the data more readable. In addition, sentence structure and grammar was added which could have had an effect on their responses. The other concern was that the nature of the questions and subject matter was complicated, and the organizational changes were still happening at the time. These factors could have had an effect on the answers given. Respondents weren't given time to prepare and responded "on-the-spot" the best they could. Participants were given the opportunity to alter and clarify the content of their interview responses within two weeks of receipt of their interview transcriptions. If no response was given after two weeks, it was assumed that the transcription was accurate and accepted as is. Despite the fact that the organizations were progressing in their transition process, no substantive changes were made to their responses. All interview Respondents received their transcript but only four Respondents added clarification or had questions about the transcripts, the remaining 17 Respondents accepted their transcripts via non-response. Tracey (2010) says that the level of transcription detail and the practices taken to ensure transcript accuracy are factors that demonstrate rigor through qualitative interviewing.

Chapter IV

Findings and Discussion

Chapter IV presents the data results analysis and discussion as they relate to the two research questions:

Research Question 1 (RQ1):

What do federal sport leaders perceive to be the mandate of the *NFP Act*?

Research Question 2 (RQ2):

How do federal sport leaders think the requirements of the *NFP Act* will impact the governance structure of their organizations and, more generally, their organizations?

The data shows some overlap between the research questions with the analysis often applying to both research questions. Consequently, the following discussion has been organized to address both questions simultaneously.

Three major themes emerged from the coding of the interview responses of the 21 Respondents across 11 National Sport Organizations (NSOs). These are:

- Theme 1 – what Respondents saw as the intention underlying the *NFP Act*;
- Theme 2 – membership categories; and,
- Theme 3 – issues relating to director selection

First, the characteristics of the Respondents and NSOs in this study will be summarized.

Over the time interviews were conducted, NSOs were at different stages in the transition process from early planning stages in the process to having already completed the transition and operating in full compliance with the *NFP Act*. The responses of Respondents could have been influenced by the particular stage of transition of the NSO, and could have changed as the organization moved through the transition. The transition status could become relevant because a Respondent could have a better sense of how

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their organization is addressing the legislation's requirements if their NSO is farther along in the process. As a result, some Respondents were able to comment on their NSO's structural changes with greater certainty and clarity. For example, Respondent 7R1 provided limited commentary because they had just been hired and entered the organization's transition process midway. The other 20 Respondents had a good sense of the legislation's requirements and the impact on their organization. The key factor with respect to transition status was that the NSO had at least started and knew how they would change their structure to comply.

It was anticipated that at least two factors would influence the perspective of Respondents: their position within the NSO and their professional experience. Table 5 summarizes the professional and positional characteristics of all interview participants.

Table 5		
<i>Personal characteristics of Respondents from participating NSOs</i>		
<u>Respondent</u>	<u>Position in NSO</u>	<u>Professional background</u>
1R1	Chief Operating Officer	Sport and recreation management
1R2	Chair of the Board	Accounting
2R1	Executive Director	Sport and recreation management
2R2	Chair of the Board	Accounting
2R3	Governance Committee	Education
3R1	Executive Director	Sport management, coaching
3R2	President	Real estate
4R1	Executive Director	Sport management
4R2	Chair of the Board	Executive management, business
5R1	Chief Executive Officer	Sport management, executive management
5R2	President	Executive management, real estate
6R1	In-house council	Lawyer
6R2	President	Lawyer, executive management
7R1	Executive Director	Kinesiology, former athlete
7R2	President	Lawyer
8R1	Chief Executive Officer	Executive management, business
8R2	President	Sport management, executive management
9R1	Chief Executive Officer	Sport management, executive management
9R2	Board Director	Executive manager, federal civil service
10R1	Chief Executive Officer	Sport management
11R1	Chief Executive Officer	Sport management, executive management

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Each NSO selected was represented by two categories of Respondents, an executive volunteer and a senior staff member. It was originally anticipated that the executive volunteer would be the President or Chair of the Board, and the senior staff member would be the Chief Executive Officer (CEO) or the Executive Director (ED). As Table 5 shows, this assumption did not always hold true. During recruitment, other volunteers and staff members were recommended as alternative Respondents due to their greater knowledge and involvement in the transition process. This practice was beneficial since the goal was to interview individuals who were most directly involved in their NSO's transition. Ultimately, the 21 Respondents interviewed consisted of 11 executive staff (labelled R1) and 10 executive volunteers (labelled R2, and R3 for NSO2).

Despite the variation in positions and professional experience, the findings showed no clear difference between the two categories of Respondents, whether within or between NSOs. A potential explanation for this lack of differentiation might be that most of the NSOs were well prepared for the transition and had a well-developed plan. Many organizations began planning for the transition early and many enlisted expert consultants to guide their transition. The further along the organizations were in their transition the more prepared they were. In addition, Respondents from NSOs 1, 2, 3, 4, 8, and 9 indicated that they created a governance committee to deal with the transition process, or otherwise already had one in place. Such a governance committee provided specialized direction and recommendations and would have considered all the options and produced some initial consensus on the best approach for their NSO.

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The distinguishing characteristics of the NSOs did have an influence on Respondents' perspectives, specifically the board composition and membership class structure. Table 6 summarizes the organizational structure of the NSOs.

Table 6						
<i>General organizational characteristics of selected NSOs</i>						
<u>NSO</u>	<u>Board Size</u>	<u>Board Composition</u>	<u>Primarily elected or appointed</u>	<u>Member classes (#)</u>	<u>Voting classes (#)</u>	
1	10	Competency-based	Elected	1	1	
2	18	Representative	Appointed	12	4	
3	9	Competency-based	Elected	4	2	
4	9	Competency-based	Even split	5	3	
5	9	Competency-based	Elected	6	2	
6	31	Representative	Appointed	5	2	
7	10	Competency-based	Appointed	3	1	
8	10	Competency-based	Even split	5	1	
9	8	Competency-based	Elected	6	1	
10	7	Competency-based	Elected	2	1	
11	3	Competency-based	Elected	1	1	

Note. The information used in this table was taken from organizations' by-laws in force prior to any changes precipitated by the *NFP Act*.

Two key governance structures of the organizations are summarized, specifically, the make-up of the board of directors and membership categories of the organization. These are the two key areas addressed by the *NFP Act* as identified in the review of literature and review of the legislation. The legislation places limitations on the number of appointed *ex officio* positions to boards and gives, certain voting rights to all 'members' of the organization.

The negative NSO.

Part of the selection methods for this study included having a "negative case", as referred to in the literature, in order to improve the rigor of the study. In this situation, the negative "case", or research subject, was a NSO that was not required to make any

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changes (i.e. already in compliance with the legislation) according to the pertinent areas, i.e. director selection and membership rights. NSO11 was selected for this purpose and was represented by a single interview participant, Respondent 11R1. NSO11 had a very small competency-based board, the directors of which were all elected by the members. This NSO only had one class of members and all of which had voting rights. Respondent 11R1 acknowledged the good state of NSO11's structure, stating that "Our structure is mostly compliant, and we're going to have to make a couple of changes, but this will not require sort of 'governance 2.0'. It will require more significant adjustments but not a complete overhaul."

The primary reason for including an organization that was already structurally compliant with the legislation was the expectation that it would yield less rich data concerning the impact of having to make changes. The other assumption made was that the sport leader from this negative case would provide alternative insights about the mandate of the legislation since their organization would not be as significantly affected. In actual fact, the data gleaned from Respondent 11R1 was informative and contributed to the discourse from other Respondents (i.e. rich data). However, when Respondent 11R1 discussed the implications of certain requirements of the legislation, it was more hypothetical and in reference to other sport organizations; 11R1 specifically used the Canadian Olympic Committee as an example when discussing the effects of the legislation. There were some instances where the structure of NSO11 was irrelevant when compared to the other organizations. For example, when discussing why the legislation would not have a significant impact on governance, Respondent 11R1 provided the same rationale as other Respondents in that their organization already performed a governance

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review. When asked whether NSO11 took the transition process as an opportunity to re-evaluate their governance structure and make other improvements, Respondent 11R1 stated:

No, this is an opportunity to tweak so we comply, so that idea of ‘Since we’re cracking it open, let’s fix everything,’ that didn’t really resonate. But, the change in the governance to where we are now where we’re pretty close to compliance is not that old. So the sort of governance overhaul, there is some fatigue there.

Overall, the perceptions of Respondent 11R1 were insightful and informative despite the lack of impact on NSO11. The interviews showed that this was attributed to the Respondent’s personal interest and knowledge of the legislation and in governance, so the fact that the NSO was already compliant had no significant bearing on the leader’s ability to comment on the legislation and its impact on the governance of sport.

Overview of data collection and setting up the themes

The intent of the *NFP Act* is to modernize not-for-profit corporate governance by fundamentally increasing the level of accountability and transparency within such corporations. Modernization in this sense might best be described as encouraging the principles and practices of ‘good governance’. Chapter II suggests that there are no objective standards for determining good governance, but fundamental principles typically include the core concepts of accountability and transparency (Aguilera & Cuervo-Cazurra, 2009; Aguilera & Cuervo-Cazurra, 2004; Nanda, 2006; Woods, 1999). These concepts are core principles of the practice of good governance and are emerging in codes of good governance around the world (Aguilera & Cuervo-Cazurra, 2009). While the goal of the *NFP Act* is to encourage (and even mandate) these core principles

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of good governance, it is through the various provisions of the legislation that these goals are achieved. A list of the key provisions of the *NFP Act* that target either accountability or transparency can be found in Appendix K.

The provisions that enhance transparency revolve around the legislatively mandated reporting requirements to keep members apprised of board decisions and to provide members with open access to information. From the perspective of the Respondents, transparency involves communicating with members and keeping them informed, most generally by way of the annual meeting and disclosure of financial reports. Interviews with Respondents focused primarily on enhancing accountability as opposed to those measures targeted towards greater transparency. The general consensus of Respondents regarding transparency was that their NSO was already doing much of what the *NFP Act* called for. Indeed, a number of Respondents saw their organizations as being sufficiently transparent because of financial reporting requirements required as part of the receipt of government funding (Respondents 8R1, 5R2, 4R2, 3R2).

Respondents focused primarily on accountability and the following analysis will follow a similar focus. The following sections will discuss the three major themes that came from the data: the intent of and necessity for the legislation, the composition of the membership of the NSOs, and the selection of directors.

Theme 1 addresses Respondents' perceptions of the legislation in general, and more specifically the topics that were either directly or indirectly associated with the mandate of the legislation. The *apriori* codes included general concepts related to the intent of the legislation derived from the literature, including: accountability, transparency and modernization, the attitude of the leaders and the NSO's approach to

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transition, and discussions of sport within the not-for-profit sector. The emergent codes that came out of the data during analysis were related to the perceptions about the legislation itself and included discussions of the following: maintenance of the NSO's previous structure by using a "work-around" to circumvent the legislation whilst still complying technically (e.g. maintaining of status quo), by-products of the transition such as greater efficiency and flexibility, the necessity of the legislation such as the perceived lack of change to board structure and voting members, and the idea that transition process is a burden or a catalytic event providing opportunity to implement changes.

Theme 2 strictly addresses the issue of membership, including the changes to membership categories and the enhanced rights of members. The *apriori* codes included member-related issues including: the single membership class, the definition of a member (terminology), and the fundamental change provision granting at least some voting rights to all members. The emergent codes that emerged from the data that related to Theme 2 included: clarification of which stakeholders are the actual active members of the corporation, the lack of impact due to a simple change in terminology, and the level of membership engagement in the business operations.

Theme 3 concerns the issues relating to director selection. The discussion around the operational and procedural aspects of the legislation was included in this theme as well (the default provisions). The default provisions proved to be primarily a non-issue but if mentioned, they fell under the umbrella of Theme 3. The *apriori* codes stemmed from the literature and were derived from the restrictions on ex-officio selections, which included the following topics: the board type, regional representation, director recruitment, and the role of athlete directors. The emergent topics included discussions

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around conflict of interest (e.g. trust, “old boys club”), and the lack of impact due to pre-existing governance improvements at the board level as a result of a recent governance review.

The following sections will discuss each theme based on the *priori* and emergent codes derived from the data, and present an analysis of the findings as they relate to each respective theme and the Research Questions.

Theme 1 – The intent and necessity for the legislation.

This theme focused on how Respondents saw the intention of the *NFP Act* and significantly contributes to answering RQ1. Respondents described the intent of the legislation using different words but, as a group, they seemed to respond similarly. Other than Respondents from NSO1 and NSO11, 18 of 21 Respondents indicated that they had access to similar information about the legislation in the form of documents and presentations outlining the purpose and intent of the *NFP Act*. One of these resources was the Canadian Olympic Committee (COC), which hosted a conference and workshop on the *NFP Act* in addition to sending out detailed information to Olympic NSOs. NSO11 is not an Olympic sport and thus is not a member of the Canadian Olympic Committee and did not get the material. Furthermore, almost all of the NSOs, except NSO1, had been in contact with an expert consulting group for advice on the transition, and NSOs 2, 3, 5, 6, 7, and 10 had taken the further step of retaining the same expert consultant to facilitate their transition to the *NFP Act*.

Despite the *NFP Act* not explaining the goals explicitly in the legislation itself, the external information available from third parties provided NSOs with enough information to understand, at least in general, what the *NFP Act* would mean for their organization.

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The goals of the *NFP Act* according to sport leaders.

Interview Respondents were asked what they perceived to be the intent, or ‘mandate’, of the legislation. If the Respondents spoke about promoting accountability and transparency, or used similar terms, they were then asked to explain what these terms meant to them and what they meant to their organization. If the Respondents did not reference these specific terms, they were asked whether they thought the principles of accountability and transparency had any resonance in their organization. The Respondents did not explicitly list accountability and transparency as the goals of the *NFP Act*, but they all identified that modernization was the intent of the *NFP Act*.

The term ‘modernization’ was used in two different ways. The first way described the updating of an old document, and the second described the incorporation of modern governance practices. Initially, Respondents used modernization in the sense of updating the previous governing legislation, the *Canada Corporations Act* (CCA). For example, when asked about their initial perception of the intent of the *NFP Act*, Respondent 6R1’s response was typical:

I think as a whole...from everything I read, it was an attempt to bring the [*Canada Corporations Act*] as it dealt with not-for-profit organizations into the 21st century.

Respondent 6R1 is speaking about updating a document that was written many years ago. When probed further, Respondents 1R1, 6R1, 7R1, 8R1, 8R2, 9R1, 9R2, 10R1, and 11R1 used modernization language to explain how the *NFP Act* was forcing structural changes to the governance of the organization, specifically to board structure. According to Respondent 1R1:

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I think it was largely to modernize [the *CCA*]... which is great because the [legislation] that we've been using is, you know, 100 years old and written with old English, which is difficult to comprehend and really understand... I would say it [*NFP Act*] is much more modern, it suits the way that business is run and how boards need to operate.

These leaders identified the board of directors of an organization as the mechanism for achieving modernization. Indeed, requiring a mainly elected board of directors is how the *NFP Act* achieves one of its goals. The Respondents who used modernization in this sense understood the primary intention of the *NFP Act* and the insistence upon an elected board as a critical way in which the legislation encourages greater accountability.

Five Respondents (2R1, 2R2, 6R2, 3R2, 5R1) demonstrated their understanding of the goals of the *NFP Act* using somewhat different language. These Respondents referred to the 'spirit' of the *NFP Act* and demonstrated an understanding of the fundamental goals through practical examples. For example, Respondent 2R1 described the 'spirit' of the *NFP Act* when discussing the enhanced rights of members with regard to director elections (a mechanism of accountability). Respondent 3R2 used it in reference to unethical corporate behaviour with respect to reporting and disclosure of information (an aspect of transparency). These five Respondents acknowledged the core intent of the *NFP Act* by referencing the impact of various areas of organizational behaviour on the accountability of the organization.

Ultimately, the Respondents use different language to describe the intent of the *NFP Act* showing that they understood the fundamental goals. The Respondents demonstrated this understanding by identifying different tangibles, such as the actions of

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persons within the organization, which reflect or impact the degree of accountability in the organization. Stated another way, when Respondents were asked about the intent of the legislation, they responded more concretely than conceptually. The variation in how the Respondents described the fundamental goals of the legislation shows the diversity of how the concepts of accountability and transparency are manifest.

Several Respondents indicated that their NSO was already operating in an accountable manner. This raises the issue of what indicia of accountability are appropriate, and how can this be measured. It could very well be that each NSO has varying mechanisms of accountability in place, and although each organization is different, each could perceive their methods to be appropriate for their organization. As an example, Respondents 4R1, 9R2, and 7R1 thought their organization to be operating with sufficient accountability. These Respondents commented that the *NFP Act* would not change anything with respect to accountability.

When asked whether the changes made to be in compliance with the legislation would enhance accountability and transparency, Respondent 4R1 said that “our membership is very small... and we have meetings twice a year and conference calls multiple times a year. So it’s not like our members don’t know what we’re doing.” From the perspective of Respondent 4R1, accountability is defined in terms of the organization’s communication with its membership. The same emphasis on communication as being crucial to accountability and transparency was mirrored in more detail by Respondent 9R2, who stated:

Our current president also has an ongoing meeting schedule with our branch presidents to keep them apprised of things. It’s really helped us an awful lot in

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keeping the information flow going. So, I thought that was really good and there's nothing there for us to hide, but a lot of times the accountability and transparency problems arise from a lack of communication structure.

Following this statement, Respondent 9R2 emphasized NSO9's pre-existing mechanisms of accountability and transparency by way of their communication structure that was based on personalities and relationships:

I think we had mechanisms in place before the legislation. It was based on personalities and relationships that were in place before. Directors got on the board because we all came up through clubs and branches and we've got friends who are in clubs and branches now...it's a small sport so it's hard not to maintain those contacts.

The perspective of this Respondent is that the communication structure, whether formal or not, is perceived to be a crucial aspect of accountability – a perspective shared by other Respondents. Regardless of how Respondents identified and described the intent of the legislation, they indicated that it can be met in different ways. The evidence shows that many Respondents see themselves as already being accountable in various ways; however, the legislation contemplates a specific road to accountability. Specifically, the way in which the *NFP Act* promotes accountability is through direct engagement of members rather than simply reporting structures. In other words, direct engagement is in the form of giving members greater authority through the right, and responsibility, to vote on matters at a meeting of members.

A likely explanation for why Respondents equate accountability with reporting structures may be reflected in what NSOs are accustomed to, that is, being monitored and

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having to report to third parties. As recognized by Respondents 7R1 and 10R1, NSOs owe some degree of accountability to their main donors, whether a government agency, such as Sport Canada, or the COC (Eakin & Graham, 2009; Hoye, 2003). Ultimately, the constituents to whom sport leaders feel they need to be accountable include other agencies and not simply their membership. It appears as though a large part of operating with accountability in sport involves appeasing all stakeholder groups and not only the voting membership. The issue that arises is establishing to whom NSOs need to be accountable: the voting members, the athletes, or to those who are ‘paying the bills’. In the end, it would seem there are varying degrees of accountability, and the type of accountability owed depends on whether the other party is a voting member of the corporation or a stakeholder with different interests and importance to the NSO.

Theme 2 – Membership categories

The *NFP Act* has had the effect of eliminating the non-voting member because the title “member” now has specific voting rights attached to it, and because of the desire to avoid giving votes to stakeholders who would otherwise not have a say at an annual meeting. As a result, NSOs have had to reconsider to which stakeholders they give the title of member because of the implications of this right to vote. It has been common in sport to give multiple stakeholder groups the title of member but without a vote at an annual meeting. Upon review of the governing documents (by-laws), all but two NSOs, NSOs 1 and 11, in this study had multiple membership categories that included a non-voting class of members.

An essential part of enhancing accountability is establishing to whom the organization should be accountable, and ensuring it is accountable to that constituency.

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The *NFP Act* identifies that constituency as the ‘members’ of the organization, and puts in place measures to ensure that the directors of the corporation are accountable to that constituency. However, the *NFP Act* does not define who is a member, or membership categories. The issue is that the members of NSOs are not clearly defined as they are in the typical for-profit company for shareholders who play an integral “watchdog function” in the governance of the corporation because they are owners and thus have a vested interest (Geeraert, 2013, p. 7). The legislation mandates that directors be elected by members. Thus, defining which stakeholders are members with voting rights at an annual meeting becomes crucial.

The conditions of membership are addressed in s. 154 of the *NFP Act*, which simply states that the by-laws of a corporation must set out the required conditions for membership, including whether a corporation or other entity may be a member. Furthermore, the *NFP Act* does not prescribe the number of membership categories, although it does require that at least one membership category has voting rights. Additionally, the *NFP Act* contains a provision that awards all member categories with a vote in situations involving fundamental changes.

Who is a Member?

Under the *NFP Act*, the title of ‘member’ has different meaning than under the *CCA*. The *NFP Act* has mandated that the title of ‘member’ means having the right to vote. The *CCA* allowed not-for-profit corporations to allocate voting rights in any way they saw fit in their by-laws. For example, prior to the *NFP Act*, Archery Canada’s by-laws showed 16 different membership categories, three of which were not given voting rights. Under the *CCA*, those three non-voting membership categories would not have a

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vote in any circumstance. The new legislation does not prescribe any membership structure, but it indirectly discourages multiple member categories with different voting rights. The *NFP Act* states that all member categories will have some voting rights. One of those specific instances is in the event of a fundamental change to the corporation.

Part 13 of the *NFP Act* (2009) deals with “fundamental changes”, a full list of which can be found in Appendix A. As a general summary, fundamental changes relate to the core operational components of the corporation. What makes this provision important is that it casts a wide net for what constitutes a fundamental change by including any changes to the rights and conditions of any membership category (CNCA, 2009). From a practical perspective, this means anything that directly or indirectly affects the rights of a membership category. Many scenarios could be construed as constituting a fundamental change. Section 199 of the *NFP Act* (2009) allows a class of members to vote separately as a class, which could give a group of members voting rights that are disproportionate to their size. For example, many NSOs have a separate membership class for honorary members, which could have few members within the class. In the event of a fundamental change, this small honorary membership class would be given the same voting rights as a larger membership category such as the provincial associations. As a result, the legislation has essentially given a potential veto vote to minority classes within the corporation, which could ultimately fetter the hands of the executives (Gray, 2011; Prince, 2011).

In response to the issue of defining a member in light of s.197 of the *NFP Act* (2009), Respondent 4R2 stated “the fundamental changes are, you know, the clarifying of the definition of member, which is a little bit problematic for a lot of sport organizations

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because we tended to think of players or participants as *members* [emphasis added].” The clarification of who members are goes beyond the athletes as Respondent 4R2 describes. Sport organizations tend to have many different groups who have been dubbed members simply because they are perceived as a stakeholder of the NSO. In the past, the term ‘member’ and ‘stakeholder’ could have been used interchangeably, but the legislation has not changed this so a ‘stakeholder’ is not necessarily a ‘member’.

Related concerns are logistical in nature. For example, s.162 of the *NFP Act* (2009) states that each member must be supplied with 21 days’ notice of a meeting. Giving notice could be logistically problematic depending on who the NSO designates as a member. The Canadian Soccer Association (CSA), for example, has roughly 868,000 players, 23,000 referees, 140,000 coaches and 1,500 soccer clubs. If each were deemed members in a separate category of membership, every individual in each category would be entitled to receive notice of a meeting and could theoretically be entitled to vote separately. From a practical standpoint, it would be difficult to provide notice to all of these groups and also to hold a meeting and administer a vote of such magnitude. Not all NSOs have such substantial stakeholder numbers as the CSA, but most have a very high number of stakeholders that have previously been included in the membership structure as non-voting members.

The current membership structures of sport organizations.

National sport organizations tend to have many different stakeholders with a vested interest in the organization, including provincial and territorial sport organizations (PTSOs), athletes, officials, coaches, affiliate organizations, businesses and the federal government. Another debate revolves around which stakeholder should be given the title

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and ensuing rights of a ‘member’ given the changes precipitated by the *NFP Act*. Many sport organizations at the national level share a similar organizational structure recognizing the hierarchical and regional nature of sport. The breakdown of the membership structures of selected NSOs for this study is summarized below in Table 7.

<u>NSO</u>	<u>Classes</u>	<u>Voting member classes</u>	<u>Non-voting member classes</u>
1	1	(1) PTSO	(0) None
2	12	(4) PTSO, Clubs, Special Associations, Elected Officers	(8) Associate individuals and organizations, Honourary individuals and officers, Introductory, Life, Club members, Supporter
3	4	(2) PTSO, Athlete reps	(2) Associate, Honourary
4	5	(3) PTSO, BOD, Officials Association, National Athletes Reps, The Pro League, Affiliate corporations/ leagues/organizations	(2) Other corporations, leagues, organizations, and Honourary
5	6	(2) PTSO, BOD	(4) Committees, Individuals, Teams, Host Committees
6	5	(2) PTSO, Elected individuals	(3) Associate, Life, Appointees
7	3	(1) PTSO	(2) Individuals, Honourary
8	5	(1) PTSO	(4) Clubs, Affiliates, Individuals, Supporting
9	6	(1) PTSO	(5) Ordinary, Honourary, Partner, Independent, Special Event
10	2	(1) PTSO, Chair of Athletes' Council	(1) Athlete members
11	1	(1) PTSO	(0) None

Traditionally, provincial and territorial associations have been considered to be key stakeholders that deserve a say in the governance of the NSO. All 11 NSOs had the PTSOs as voting members of the NSO. It also seems NSOs often consider PTSOs as the most relevant stakeholder. For example, NSOs 1, 7, 8, 9, and 11 have them as exclusive voting members, and NSOs 5 and 6 awarded votes only to the directors and officers of the corporation in addition to the PTSOs. Not every stakeholder group has been given

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voting rights; however, one might ask why athletes are not always voting stakeholders in a NSO?

NSOs 2, 3, 4, and 10 include athletes in some form as voting members while the remaining organizations do not. Why would some NSOs allocate votes to athletes whereas others do not? The explanation is possibly in how the sport operates and the type of stakeholders associated with each sport organization. One factor to consider is that NSOs 2, 3, and 10 are club, or event-based, sports (NSO3 is an individual sport) and, as such, the sport takes place in a tournament style by way of arranged competitions organized between clubs – as opposed to the league format of many sports with games played weekly during the season. The key distinction of club-based sports is that the athletes typically belong to a club and not to the regional or provincial sport association. The clubs are typically the members of the PTSO. The link between the athlete and the NSO is distant. This creates a dependency on the PTSO to disseminate information down the communication hierarchy. In non-club based sports such as snowboarding, the athletes register with their province or territory association regardless of their club affiliation and, since the PTSO is a member of the national body, the NSO has a more direct line of communication and control over the athletes. Consequently, club-based NSOs seem to use membership status as a way to increase direct communication with their athlete stakeholders. This is exemplified by Respondent 3R1 who stated:

We are trying to increase our relationship or contact with the athletes. That was an area when I started that we were very poor at, and we've taken a lot of steps to include our athletes in everything that we do now.

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Prior to the *NFP Act*, NSO3 was one of the few organizations that gave athletes a vote at their annual meeting through two athlete representatives. In the time elapsed since the interviews, NSO3 has completed the transition to the *NFP Act* and has created a separate membership class composed of National Team Athletes with a right to elect an athlete to the newly created Athlete Director position on the organization's Board of Directors. Indeed, NSO3's new organizational structure is a response to a previously identified lack of relationship between the athletes and the organization.

NSO 4 is not club-based but is unique in that it has a close relationship with the corporations, organizations and leagues that contribute to the development of their sport, including the for-profit corporation that runs the affiliated professional league. As with the club-based NSOs, NSO4 allocated votes to stakeholders outside of the PTSOs to foster a closer relationship with the associate corporations, organizations and leagues. At the time of the interviews, the organization had not received approval for their proposed structural plans to maintain the same voting members going forward under the *NFP Act*. Respondent 4R1 stated that the NSO4's plan was to maintain the same voting members while splitting them into only two voting membership categories, specifically, Class A members consisting of the PTSOs, officials association, national team representatives, and the association that runs the professional league, and Class B members consisting of affiliate corporations, organizations and community leagues.

As a group, it is clear that there is no consensus amongst NSOs as to who should be given voting membership status. Table 7 shows that the only stakeholder group that NSOs unanimously give voting rights to are the PTSOs. Other than the PTSOs, numerous stakeholder groups are designated as members with or without voting rights, which is to

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be expected given that different organizations will value stakeholders differently. Despite the variety of stakeholder groups in a voting or non-voting member class prior to the *NFP Act*, the general perception held by Respondents was that the enhanced rights of members would not have much of an impact on their membership structure. The main reason given was that the change was easy because the stakeholders with a vote would be called the members and any other stakeholder would be called something else.

Prior to the interviews, it was anticipated that the changes to the definition of ‘member’ would have a significant impact. The Respondents denied the significance of this change early during the interview process. Respondents stated that a simple change in terminology would solve any potential issues incurred because of the *NFP Act*, and going forward, the groups who had voting rights under the previous legislative structure would remain the same. For example, in response to the impact on membership structure, Respondent 8R1 stated that:

Really, our members are our branches, so [we have] ten members and there’s only one type of voting member. So, that’s easy...like I say, it [the *NFP Act*] doesn’t really have a huge effect on the way we do business, those were our ten voting members period so that doesn’t change.

Essentially, the perceived level of impact is primarily based on whether there were any changes to the rights of the previous voting members. Respondent 5R1 summarized the thought held by many Respondents stating “there was no loss of voting or anything...it was just really a change in terminology.” The terminology is the use of the term ‘registrant’ or ‘registered participant in lieu of “non-voting member”’. Even though many NSOs gave various stakeholder groups the title of member, the only

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relevant members were those with a vote, and the others held the title as a type of ‘formal’ recognition but with essentially no rights except to attend an annual meeting.

Respondents 1R2 and 8R2 made comments that potentially explain the confusion surrounding the definition of member. When asked about the changes to membership categories, Respondent 1R2 stated “I don't think there was confusion about the definition of members. I mean, at times people talk about the participants, meaning the players, as being members of [NSO1], and they do pay a registration fee, but they're not members.”

Respondent 8R2 echoed the 1R2's statement, saying that:

It just did take a while to get people's heads around it [the *NFP Act*] because how one word, it's just the vocabulary is challenging. So, you know a ‘member’ has a very specific legal meaning in this context whereas before we used member a lot more loosely, but you know, once people got their heads around that then it was all good and pretty straight forward.

While it may be straightforward to remove the title of member from any stakeholder that did not previously have a vote, it is more difficult to establish where the athletes fit in the organizational structure. According to the NSOs, most of the athletes are not members in the technical sense of the definition. Table 7 shows that in the membership structures of the four NSOs that included athletes as members, the only athletes included were individual representatives of the male and female national teams and no other athletes. With the exception of NSO4 and NSO2, the majority of NSOs did not allocate votes to more than two types of stakeholders. This is an indication that perhaps NSOs do not typically want any stakeholders outside of their PTSOs to have a say in the governance of the organization.

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Five of eleven NSOs had more than the PTSOs as voting members but going forward under the *NFP Act*, all but NSO4 indicated a desire to reduce membership categories to one single voting membership class. Rather than having multiple member categories with different voting rights, a solution is to simply have one membership class composed of those with voting rights. Reducing multiple groups into one membership category could be problematic because of the potential diversity of individuals within those categories. Ultimately, however, significant reductions and consolidation of member categories posed few problems for NSOs because those groups with a vote stayed the same. For example, NSO2 reduced 12 membership categories, 4 voting and 8 non-voting, down to one membership category. Respondent 2R2 stated that everyone who had a vote prior to the *NFP Act* would still have a vote, except the directors, so the reduction in membership classes posed no issues.

The single membership class as a solution to fundamental changes.

The single voting membership class was a potential solution suggested by a charity law firm in response to s.197 of the *NFP Act*, the section dealing with fundamental changes to the corporation (Man, 2011). Man (2011) explains that the rationale for collapsing all membership classes into one class is to avoid the potential unwanted effect of the fundamental change provision. Man (2011) rationalizes this solution as follows:

Where it is not desirable to seek approval by class votes in the manner provided for in the [*NFP Act*] resulting in a *de facto* class veto mechanism, it will be necessary to have only one class of members and to develop workarounds on how to involve other individuals in the corporation. For example, if a corporation

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wants to involve broad-based community support of its [not-for-profit] purposes, consideration may be given to enlist them in some capacity in the corporation, but not as members, whether voting or non-voting. It will be important to ensure that they are not referred to as ‘members’. Possible alternatives may include affiliates, associates, supporters, volunteers, etc. (p.21-25).

Essentially, Man (2011) provides a solution to the issue of defining who a member is simply by creating a dichotomy: those with a vote are members and those without a vote are called something else. All of the NSOs in this study, except NSO4, indicated that they are following such a model by consolidating their member classes to one single voting class as Man (2011) suggests. The Respondents indicated that the rationale for this reduction in classes is s. 197 of the *NFP Act* (2009). For example, Respondent 9R2 justified a single voting member class as follows:

... It does avoid the complications of making a fundamental change to the bylaws. It avoids the so-called veto power in one group. But also, we looked to who our actual members are for the organization and they are the branches and that’s who sends voting delegates to the AGMs.

The creation of a single voting membership class primarily comprised of PTSOs highlights the NSO perspective of what stakeholder input is valued with regard to governance. It would seem that a greater proportion of NSOs do not include athlete groups in a voting member class. So if not a voting member class, where do the athletes fit in within the NSOs governance structure? These questions do not seem to have any definite answers and there is certainly no consensus amongst NSOs. Respondents seemed

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to value the input of athletes overall, but this did not necessarily translate their inclusion in a voting membership class. Some NSOs opted to create an athlete committee that advises the board or keeping the board position to allow athletes to have input. The change in terminology to “registered participants” that NSOs have opted to use suggests that the athletes, at the community level, are perceived as being more akin to a ‘customer’ or ‘consumer’ of the corporation’s product (the sport) (Gray, 2011).

In Chapter II, Gray (2011) established that the *NFP Act* was modelled after the *CBCA* and that it uses a shareholder model meant for the for-profit sector. In the context of NSOs, this shareholder model does not necessarily translate to a sport model as athletes are not thought of as the ‘owners’, or shareholders, of the corporation. Athletes do have a vested interest in the NSO, but it is to continue to compete, not to be a part of the successful and fruitful ‘production’ of the corporation. The idea that athletes are the members is based on a historical interpretation, coming from a time when athletes got together to run their sport. This is no longer reflective of the modern sport scene, especially at the national level in Canada where the running of the organization is now left to professional staff and administrators (Kikulis, Slack, & Hinings, 1995). Athletes were described as not typically being interested in governance and they want to simply ‘play the game’. In the context of discussing the role of athletes in the governance of the national organization, Respondent 5R2 stated that:

Most athletes are not interested in sitting on a board; at the national level they’re more interested in playing the game. They might be interested in coming to attend an AGM [and] just going through the process that happens at an AGM to see how

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things are decided and how things are changed, but basically what we're told by the athletes is that they're not interested in sitting at meetings.

The answer to the issue of who is or should be a member is quite clear, it is those stakeholders who the NSO wants to have a say in governance. Whichever stakeholder is given voting authority differs between NSOs; however, there is a clear consensus amongst NSOs that the PTSOs must be voting members, if not the only voting members of the corporation. It is logical to give voting rights to the PTSOs because of the hierarchical way that sport is structured; every NSO has regional associations that run the sport within their jurisdiction, which has been called the federation model. Without a doubt, the sport associations from the provinces and territories are key stakeholders with a significant interest in the successful operation of the national body. The national body is typically responsible for the national teams and for developing the sport broadly in the country. Specifically, the NSO comes up with the strategic plan and vision, but the implementation is typically delegated to the regional associations to carry out locally. The role that PTSOs play in carrying out the NSO's plan is likely a significant factor for the consistent allocation of votes across all national sport. This is interesting because there are many other stakeholders with a vested interest in the efficient and successful operations of the NSO, in particular the national team athletes. It is curious that only the regional associations are consistently given voting rights and considered to be members of the corporation. The national athletes, or participants as they may be now called, are important recipients of the NSOs programs and services. For some NSOs, only athletes considered to be members are the national athletes, whereas others do not perceive athletes to be voting members in any capacity. It seems to be more common than not to

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exclude athletes from a voting member category and to include them in the governance of the organization in other ways. It appears to be logistically easier to gain athlete input through committees or through a couple of athlete representatives on the board rather than including thousands of individuals in a member category.

Theme 3 – Issues relating to director selection

The review of literature showed that a major area of impact for sport organizations of the *NFP Act* would stem from the reduction in appointed *ex officio* director positions. Resulting from the change to director selection, the literature suggests that issues with board composition would become relevant, specifically issues around regional representation, director recruitment, and athlete directors. Coding of the interviews with NSO leaders identified conflict of interest as an issue emerging, along with the lack of trust between members and the executive, and perpetual boards (otherwise called the ‘old boys club’). A related issue that emerged that could explain the NSOs’ readiness for governance changes was that many had recently conducted a governance review.

The board of directors of an organization is the governance centrepiece of the corporation’s decision-making power. As such, its composition becomes highly important. Under the *NFP Act*, the members have an enhanced role in defining the characteristics of the board including, for example, determining its size. As a result, Respondents placed significant emphasis on director-related issues in comparison to the membership-related issues. It may be the Respondents did not see a connection because from their perspective, the voting members of the organization would remain unchanged and there would no effect on who might be selecting the board. The potentially

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confounding factor is that the reduction in appointed positions means that the voting members are now responsible for selecting a greater number of the directors, i.e. they have more authority and responsibility.

The discussion with Respondents around director selection was extensive and raised various issues for NSOs. Most issues fell under the rubric of “modern practice” or “best practices”. Respondents seemed to be referring to (whether indirectly or directly) the concept of ‘good governance’, which has been a general thrust of governance reform efforts in the not-for-profit sector (Houlihan & Green, 2008; Hoye, 2003; Sam, 2009; Shilbury & Ferkins, 2011). In Chapter II, it was noted that a significant way in which the *NFP Act* attempts to enhance accountability for organizations is by promoting the election of directors by members. A main issue arising for the Respondents was the limitation put around director appointments; in particular, the restriction on *ex officio* appointments. *Ex officio* speaks to selection to office by virtue of holding some other appointment without any direct vote to the office by members (Black’s Law Dictionary Free, n.d.). Ultimately, three main issues arose from the discussion of director selection: *ex officio* limitations when selecting directors, the effect of changes to director selection methods on governance style, and the role of athletes in the governance of sport.

***Ex officio* limitations**

Under the *CCA*, sport organizations had greater latitude in director selection. Prior to the *NFP Act*, there were essentially three ways an individual became a member of a board of directors of an NSO:

1. A provincial/ territorial organization nominated and appointed a representative on their behalf, or;
2. The NSO board recruited and appointed someone to be a director, or;

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3. The members of the corporation elected a candidate whose name appeared on a nomination slate at an annual meeting of the NSO.

The first two ways of selecting directors are *ex officio* because the members of the NSO are not directly selecting (electing) the candidate. The first way may not appear to be an *ex officio* appointment because a member of the NSO, a PTSO, is selecting a representative; but the key is that the legislation requires all of the members to vote on director elections, which would mean all of the PTSOs in this example.

Within *ex officio* selections there are two slightly different methods that are treated the same under the *NFP Act* and are both subject to the 1:3 ratio limitation (1 *ex officio* appointed for every 3 elected). The first is a director appointment based on an individual's office held or position within an organization. The second is based on selection by direct appointment by the board. The important factor is that both these methods are considered *ex officio* and neither allows the members of the corporation to vote on the director candidate in an election. The difference between these selection methods is slightly nuanced, which was recognized by some Respondents. Respondent 4R2 spoke about the change necessary to achieve the same result but without the appointment being *ex officio*, stating that "this is all just the hoop we have to jump through because of this new Act...you know, at the end of the day we get to the same place, but it requires some sort of mental gymnastics". What Respondent 4R2 is saying is that under the *NFP Act*, a desired candidate can be put on the board, but it will now require additional steps to get that same individual there. Specifically, that individual must be nominated and put on a nomination slate for members to review and vote on at an annual meeting.

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The NSOs in this study used a combination of methods for selecting directors prior to the new legislation. The board composition and methods for selecting directors of NSOs in the study are summarized below in Table 8.

<i>Board composition and selection breakdown of selected NSOs before transition</i>			
<u>NSO</u>	<u>Board size</u>	<u>Elected Positions (election by members)</u>	<u>Appointed Positions (selected by specific group)</u>
1	10 (+ 2)	4 Directors at large 3 Regional representatives	2 Directors of Athletes 1 Past President (+2 Optional Directors)
2	18	6 Officers	10 Regional representatives 1 Athlete director 1 Past President
3	9	7 Officers	1 Past President 1 Executive Director
4	9 (+3)	6 Directors at large	1 Director of Athletes 1 Chair of Foundation 1 Officer (+3 Optional Directors)
5	9 (+2)	7 Directors at large 1 President	1 Past President (+2 Optional Directors)
6	31	7 Officers	14 Regional representatives 5 Standing Committee Members 2 Directors of Athletes 1 Past President 1 Amateur League Representative 1 Appointed Officer
7	10	4 Officers	1 Director of Athletes 1 Past President 1 Executive Director 1 Regional representative 1 Standing Committee Member 1 Director at large
8	10	4 Directors at large 1 Officer	3 Standing Committee Members 2 Directors of Athletes
9	8	5 Directors at large 2 Officers	1 Director of Athletes
10	7	6 Directors at large	1 Athlete director
11	3	3 Directors at large	0 None

The board structures set out in Table 8 show that 9 of 10 NSOs that are part of this study will have to make some changes to their director selection methods to comply with the *NFP Act*. Even though most of the NSOs have an equal or greater proportion of

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elected as opposed to appointed *ex officio* directors, the legislation requires that for every one appointed director there must be three elected (Canada Not-for-Profit Corporations Act, 2009). Fewer than half the NSOs (that is, NSO 3, 5, 10 and 11) will have to make minimal changes as they closely comply with the 1:3 ratio prescribed by the *NFP Act*. These four NSOs share a common structure: their boards are composed mainly of general directors, or, as referenced in general corporate parlance, ‘directors at large’ or ‘officers’. They have only one or two appointed *ex officio* positions such as Past President or Athlete Director. The remaining NSOs that are required to make changes have boards composed mostly of *ex officio* offices. In particular, NSOs 2 and 6 have boards composed almost entirely of *ex officio* offices reserved for regional representatives of each PTSO. Other NSOs (4 and 6) also utilize appointed director positions for stakeholder representatives outside of their PTSO members.

Based on Table 8, it seems the NSOs in this study that need to make few changes were structured in a way more in line with the *NFP Act*. An *ex officio* appointment is fundamentally undemocratic and goes against the main goal of the legislation, that is, to promote accountability to the members. Respondent 9R1 recognized this stating that “one of the problems with [sport] is [we] don’t have enough elections...it’s a family in [sport] and they don’t want to run against each other”. Respondent 9R1 shows a different side of the issue in that a lack of candidates essentially forces its board to simply appoint people to positions where there are no candidates. Respondent 6R2 recognized this central problem and, when asked about the impact of primarily elected boards, stated that “NSO6 looked at this legislation as really looking to get rid of *ex officio* [directors]”. An argument could be made that the further removed from members directly selecting the

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directors on the board, the further away that governance structure is from a complete democracy; in this sense, a complete democracy means giving voting authority to all stakeholders with an interest in the corporation. Following this premise, NSO4 is an anomalous example of an organization that is the closest to a complete democracy. NSO4 awards many of their stakeholder groups with voting membership rights. Unlike most NSOs, NSO4 gives many stakeholders the opportunity to select directors beyond the PTSOs, including: officials, the professional league, affiliate corporations and associations, and national team athletes.

Ultimately, the legislation does not prohibit director appointments, but the limits imposed on the number of such appointments make the *NFP Act* somewhat prescriptive. *Ex officio* appointments can still be part of an NSO's board structure under the *NFP Act*, but to a very limited extent (i.e. only one for every three elected, and for only 1 year terms).

Secondary effects and issues due to the changes to director selection methods.

The evidence from the interviews indicates that the board governance models were affected by the transition to the *NFP Act*. The degree to which a board model was affected seemed to be contingent on whether the board type was “operational” or “policy”. For example, NSO2 had a board structure that included heavy regional representation and *ex officio* positions, which indicates a focus on constituency representation rather than competencies. Respondent 2R1 rationalized the necessary change to how the board operates, stating the following:

[NSO2] is a very traditional organization [with] a very involved operational board... So the change to a “Policy” board is a big change...It's not that [NSO2]

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has been operating badly. So now when you get down to it, it's a whole new way to operate. I mean, even the board has gone through the process of suddenly going "we are not sure how to act now"... it's a big learning curve for everybody.

Essentially, the emphasis on director elections influences how the board operates because the focus for composition is now on competencies rather than appointing someone from each regional organization. The legislation does not prescribe a certain board model, but the limitation on director appointments moves organizations away from being constituency-based, and thus indirectly favours competency-based selection.

In another case, NSO8 had a significant number of appointed board positions that had to be reduced to comply with the legislation. When asked about how the changes to the board would impact the governance model, Respondent 8R1 stated:

I don't think it will change it, to be honest. I think because the changes are so minimal like we're not changing anything really... If there were dramatic changes, I think in some cases it might make it better or worse, but that's the way we operate. Our board is primarily a [policy-governing] board; it's not an operational board where they get involved in the staffing issues and stuff like that, [which] doesn't change under the [*NFP Act*] at all.

Even though NSO8 had to change the mechanism for selecting directors, the board model remained unchanged because the role of that organization's board is defined. For NSO8, it did not matter whether directors are voted on the board by members or appointed since the board has a predetermined role in the organization. There was no apparent middle ground with respect to changes to the governance model of NSOs. The majority of NSOs

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fell into the same category as NSO8, with the exception of NSO6 and NSO2 which required major changes.

The Board governance models of 6 out of 10 NSOs were affected by the director selection requirements of the legislation. Respondents said that the transition was an opportunity to make other changes that affect governance. Fifteen Respondents described the *NFP Act* as a catalyst for making changes in the by-laws, some minor and some major. Those Respondents that spoke about minor changes made comments similar to Respondent 9R1, who stated:

[The *NFP Act*] has given us a chance to clean up our bylaws...there are a lot of standing committees in our bylaws, which, again, is kind of historical and traditional and it's a throwback to an ["operational"] board as opposed to a "policy" board really. So, it helped us clean that up, so we'll take the committees out of the bylaws.

Alternatively, Respondents from the NSOs making more substantial changes to their board structures credited the legislation as a necessary catalyst to making them. For example, two Respondents explicitly mentioned a time period during which their NSO could not obtain approval by their organization to make substantial governance changes. Respondent 2R1 stated that NSO2 conducted a study in the year 2000 "that said they [NSO2] needed to change to a "policy" board, but they could never get there. So the [*NFP Act*] actually gave us the ability to say, 'This isn't an option'". In a similar discussion, Respondent 6R2 stated the reason that governance changes do not get passed within the NSO is because:

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The culture and the people in the element of protection and the concern about change, they just don't like to change. And that's why to a degree, compliance by a third party, the legislation, is necessary... It has to be a catalyst in a lot of ways for it to get done.

With this example, Respondent 6R2 explains the reason that regional representatives do not want to change is because they perceive that their region (PTSO) will lose some of its power, autonomy, or authority. This really speaks to the conflict of interest discussed by Goldfarb (2011), wherein the interests of the region seem to be paramount over the national body. Respondent 6R2's statement suggests that heavy regional representation on the board still exists in the NSO because the PTSOs are unwilling to relinquish their authority in the national body. It is not coincidental that both NSO2 and NSO6 explicitly mentioned resistance to change. These NSOs had heavy regional representation on their boards and use appointed directors coming from various stakeholder groups, with specialized roles, to fill directors' positions.

Section 148 of the *NFP Act* (2009) speaks to conflicting interests of directors. It states that "every director and officer of a corporation in exercising their powers and discharging their duties shall act honestly and in good faith with a view to the best interests of the corporation" (Canada Not-for-Profit Corporations Act, 2009). Respondent 8R1 illustrates the opposite of s. 148 in the context of NSOs:

There was a lot of regional representation going on. The old board had representatives from every province, right? And so they were representing their province rather than representing [NSO8]. So now when people join the board we want them to first and foremost [to know that] you're not representing

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Saskatchewan, you're representing [NSO8] in an area of expertise... [Previously] it would become more of a struggle over getting something for your province as opposed to acting in the best interest of the organization.

Respondent 8R1 highlights the potential issue around conflict of interest with a regional representative board structure. In such a structure, the President of the regional association becomes the provincial director on the national board. This structure has been used by many NSOs and can be problematic if the regional representative cannot separate the interests of his or her PTSO and those of the NSO. The central purpose of the regional representative board structure is to provide equal representation of all geographical regions so that they all have a role in the governance of their sport nationally. While this structure is democratic, this governance structure does not necessarily ensure that the board has directors with relevant skills; hence the shift by NSOs towards a modern competency-based policy-governing board.

Respondents 6R2 and 11R1 mention fear and a lack of trust when asked about the continued use of regional representation on boards. There is a certain degree of fear that has contributed to the resistance of the movement away from regional representative boards. The discussion followed the reasoning of Respondent 11R1 who stated:

So something like a provincial president representative, that's bad governance. However, in the absence of trust they need to feel like they have someone in the room and there's no way around that... representatives fill the hole where trust is supposed to be.

The above comment highlights a problem that the *NFP Act* potentially fixes by forcing NSOs to give the power of director selection almost exclusively to the members of the

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corporation. By having the members elect all of the directors, the accountability of directors is inherently to the members of the NSO since they put them on the board. The existence of a conflict of interest is potentially nullified so long as the candidates are not currently holding a position in a PTSO of their NSO.

Athlete involvement in the governance of sport.

The restriction on appointed positions could potentially pose another problem for NSOs since many utilize board *ex officio* appointments for an athlete director position. Respondents state that it is common practice in NSOs to have the National Team athletes appoint their representative on the board. Under the *NFP Act*, this becomes slightly more complicated because the National Team athletes are not usually a separate membership class as Table 7 indicates. The National Team athlete representative must first be nominated, and only becomes the Athlete Director if subsequently elected by the entire voting electorate. Respondent 9R1 stated that in this regard, the legislation actually makes it more awkward to involve athletes in the governance of the NSO.

The issue of athlete involvement in decision making in the administration of sport is not new, but it becomes relevant as NSOs modify their organizational structure to comply with the *NFP Act*. As mentioned previously, the way that NSOs have reacted to the changes to membership categories suggests that many NSOs do not consider athletes to be members with voting rights. If not as a voting member, where does the athlete's voice fit in the governance of the NSO? Athletes are the recipients of the services provided by the NSO, so one could argue that they should be involved in decision making at some level. In the past, athletes have typically been involved in the governance of NSOs at the board level as opposed to being a voting member.

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It is worth noting that when discussing the role of athletes in the organization, Respondents were not asked specifically to distinguish between athlete involvement as members, participants or as part of the board of directors. The involvement of athletes was approached more broadly in the interviews, which allowed Respondents to discuss how athletes were involved in their NSO. Respondents identified the importance of the athletes' voice in the administration of the sport; however, the majority of Respondents spoke about the athletes' voice in the context of a director issue, i.e. having an athlete director, as opposed to being part of the membership definition issue and the allocation of voting rights.

In the past, at the urging of Sport Canada, NSOs have typically had a dedicated position on the board for one or two athletes (Thibault & Babiak, 2005). Table 8 shows that seven NSOs (1, 2, 4, 6, 8, 9 and 10) utilized an athlete director position on the board, three of which (NSOs 1, 6 and 8) had two athlete director positions, one female and one male position. The Respondents from these NSOs indicated that the athlete director position is valued and would be part of the board structure under the *NFP Act*. Based on the structures in Table 8 and the Respondents' comments, the athlete's voice is still considered to be a valuable aspect of a NSOs governance structure.

In contrast, the outlier NSOs (3, 5, 7 and 11) provided evidence that questions the validity and utility of the athlete director position. The opposition to having athletes on the board is based on the potential lack of necessary skills required to be a director of a corporation. For example, when asked why athletes were not involved at the board level, Respondent 5R1 stated that:

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Athletes are on some of our other committees. We haven't put in an athlete rep on our board of directors at the moment anyway... My feeling on current athletes on your board is it's very difficult for them to participate in their sport and then participate on your board and be fully vetted, and sometimes an athlete who hasn't put in the time within the volunteer structure doesn't understand the volunteer structure....they might not understand the wider political implications because they haven't been involved in it.

Respondent 5R1 does not state that athletes cannot be directors. The concern is about actively competing athletes being a director. Respondent 5R1 might be more inclined to have a retired athlete on the board. Coincidentally, NSO2 only allows retired athletes to be directors. Regardless of their athletic status, the debate about athlete directors is whether or not the athlete perspective is necessary on the board.

Respondent 11R1 suggested that it is unfair to expect an athlete director to represent the interests of all athletes, but in reality that is not the true purpose of the position. Respondents from the NSOs that utilized athlete directors indicated that the rationale for their inclusion on the board was to bridge the gap between the organization and the athletes. For example, Respondent 1R2 stated that:

They [athlete directors] function on an operational committee that bridges between the athletes and the [sport] department, and they discuss and negotiate things and that's quite outside of the board. But at the board table they have the same responsibilities as every other board member but of course they bring the current players perspective to that discussion

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Respondent 1R2 justified a dedicated athlete director position as a way for the NSO's executive to have more direct communication with athletes. NSO4 also had an athlete director position prior to the *NFP Act*. Despite this, Respondent 4R1 questions the potential value that an athlete director's input has in the governance of the organization.

When asked about the importance of the athlete director, Respondent 4R1 stated:

They [athlete directors] never show up. If they do, all they bitch about are athlete issues. They have no idea about how to run the business or anything to do with government or anything else, so we try to be 'athlete-centered' in everything we do, but I don't think we need to be 'athlete-centered' on governance.

While Respondent 4R1's perspective is limited to NSO4 and their experience with NSO4's athlete directors, there is a potentially valid argument being made here. It may be that some athletes do not possess specific business skills to contribute to governance of the corporation as a general director. With that said, boards are typically composed of individuals with different competencies so that the board, as a whole, can govern the activities of the corporation. Thus, the 'competency' that an athlete director brings to the board could be their experience as an athlete, so their focus on 'athlete issues' as stated by Respondent 4R1 is desired. It is important to consider the role of the athlete director within the context of each NSO, as some may have different expectations for the position.

At the time of data collection, the majority of NSOs had not yet completed the transition to the *NFP Act*, so the future role of athletes in governance at the board level could change. Despite the fact that eight NSOs involve athletes on their boards, the limitations on director selection methods may affect this going forward. The legislation

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has forced all NSOs to adjust their selection mechanisms, but some organizations may make more significant modifications to board composition.

The most common attitude towards the transition held by Respondents was to maintain the status quo where possible, which includes the membership structure and governance structure in general. When asked about the organizational approach to the transition, many Respondents made comments similar to Respondent 6R1, who stated: “I think we just want to keep things as they are... in a lot of ways we were trying, to the degree possible, to maintain our existing structure.” In other words, if the operations and governance of the NSO are working and there are no apparent problems, there is no need to make changes. The reality is that 9 out of 11 NSOs in the study had to make changes to their board structures to comply with the legislation. Some NSOs could comply and maintain their previous structure by making minimal changes to satisfy the technical requirements of the *NFP Act*, but many required more substantial changes to their board structure.

Chapter V

Conclusions

This study was designed to explore how the *NFP Act* would impact the governance of NSOs from the perspective of NSO leaders. More specifically, the study sought to understand how NSO leaders perceived the mandate of the legislation, and how they perceived their organization's governance structure would be affected by the requirements of the *NFP Act*. The legislation's goals were to enhance corporate accountability and transparency, and as a result, these concepts emerged as two important areas of this research. There are four conclusions that were drawn from the data analysis and discussion that really speak to the two key areas. The four conclusions that emerged from the data analysis and discussion are as follows: the legislation was necessary to ensure that all sport organizations met a certain standard of governance, NSO leaders understood the goals sought through the legislation, NSO boards were substantially consistent with the goals of the legislation, and the regional sport associations (PTSOs) are relied upon in the governance of the NSO as voting stakeholders. The organizational characteristics of the NSOs in the study that give substance to the conclusions are summarized in Table 9 below.

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Table 9					
<i>NSO characteristics prior to the NFP Act according to the major findings</i>					
<u>NSO #</u>	<u>Board structure</u>	<u>Regional representatives</u>	<u>PTSOs as voting members</u>	<u>Other stakeholders with voting rights</u>	<u>Athlete involvement (board, voting/non membership)</u>
1	Competency	3 elected	Yes	None	2 board positions
2	Representative	10 <i>ex officio</i>	Yes	Clubs, Special Associations, Directors	1 board position, voting membership
3	Competency	None	Yes	Athlete representatives	Voting membership
4	Competency	None	Yes	Directors, Officials, Athlete representatives, Professional League, Affiliate corporations, Affiliate leagues, Affiliate organizations	1 board position, voting membership
5	Competency	None	Yes	Directors	Non-voting membership
6	Representative	14 <i>ex officio</i>	Yes	Directors	2 board positions
7	Competency	1 appointed	Yes	None	1 board position
8	Competency	None	Yes	None	2 board positions, non-voting membership
9	Competency	None	Yes	None	1 board position
10	Competency	None	Yes	Athlete representatives	1 board position, non-voting membership
11	Competency	None	Yes	None	None

Conclusion 1 – Necessity of the *NFP Act* for some sport organizations

The first conclusion is that the legislation was necessary to move some sport organizations towards greater accountability. Specifically, the legislation enhanced accountability by promoting more member-elected positions on boards and by augmenting the rights of members. The legislation's requirements for director selection and membership categories were the key to how the accountability within NSOs was increased. The board is the main instrument of governance and the authority to determine its composition is a direct mechanism of accountability. Even though enhancing

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transparency is also a fundamental goal of the *NFP Act*, the legislation was not perceived to be necessary to move sport organizations towards greater transparency. Sport leaders were satisfied that their operations were sufficiently transparent and suggested they had already implemented much of what the legislation prescribes as far as mechanisms of transparency. While the legislation may affect the way in which transparency mechanisms are implemented, such as different minimum notice periods for providing financial statements, the legislation did not significantly affect the transparency of NSOs from the perspective of sport leaders.

The *NFP Act* is targeted at the entire not-for-profit sector as a whole, so it could not take into account the individual complexities of different types of corporations. With respect to organizational changes to comply with the legislation's requirements, the *NFP Act* has likely had a greater impact on some not-for-profit corporations over others. Even amongst NSO leaders there was no consensus about the perceived necessity for the legislation. Many Respondents deemed the legislation unnecessary as they believed their NSOs to be already operating with good governance, but other Respondents deemed the legislation necessary to move their organization towards more modern governance practice. Regardless of the perceived necessity within this sample, clearly it was necessary for the sector as a whole because there were some outliers. Some NSOs were more progressive and already using modern governance practice while others were not quite there. The NSOs that were lagging behind in their governance practice needed the legislation to bring them to the same level as their NSO counterparts. The enactment of the *NFP Act* has reinforced the framework for good governance that has been established worldwide. The legislation has set a bar, or minimum standard, for governance and raises

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the standard for corporate accountability and transparency in the not-for-profit sector.

The bar is now consistent across all not-for-profits in terms of how good governance is perceived and articulated to be around the concepts of accountability and transparency, and the mechanism for achieving them.

Conclusion 2 – NSO leaders understood the goals sought through the legislation

The second conclusion is that NSO leaders understood the intention, or goal, of the legislation, although this recognition did not necessarily require major changes to the organizations' structures. Based on Conclusion 1, Respondents demonstrated that they recognized the goals of the legislation and what it was trying to achieve with respect to greater accountability and transparency, but many felt that their NSO was already doing what the *NFP Act* was requiring. Those sport leaders who felt their NSO was sufficiently transparent and accountable to their members indicated, in meeting the legislative requirements, they wanted to find a way to still retain the structure that they had prior to the legislation. They felt that they would have to make small structural changes to satisfy some of the technical requirements of the legislation but essentially they were already doing most of what the legislation was requiring. The legislation is not entirely prescriptive and does not define a threshold for what is sufficiently accountable and transparent.

There were different perspectives amongst NSO leaders with respect to the requirements of the legislation. The majority of NSOs wanted to comply with the legislation and were prepared to make changes, so as long as they could maintain their pre-existing structure to the greatest degree possible. Respondents believed that the legislation was flexible enough to maintain the same structure while still being in

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compliance. Such NSOs took the approach of making few changes to satisfy the minimum requirements of the legislation because they did not need to make major structural changes. Other NSOs took the opportunity to go further than the minimum requirements, and viewed the transition as a catalyst to make improvements and changes beyond what the *NFP Act* requires. For example, some Respondents framed the legislation as a trigger event to make broader changes: “by there being a new legislation, it's forced us to really take a magnifying glass and analyze our governance and our board structure, our bylaws, our members and the rights of members, and how we have just have to conduct our business moving forward” (NSO1, Respondent 1R1).

The legislation has forced NSOs to conduct a governance review, although the results showed that many NSOs in the study had already done so recently. An influential factor for the NSOs approach to the transition is related to how recently, or if at all, the NSO last reviewed their governance structure. The NSOs that viewed the legislation as a catalyst were due for a governance review or required a government mandate to get major governance changes implemented. Conversely, the NSOs that wanted to maintain status quo recently made changes to their governance structure and justifiably wanted to keep things the same. Regardless of the NSOs approach for implementing the legislative requirements, the end result is that they are more consistent as a group with respect to having operations that are accountable and transparent.

Conclusion 3 – NSO boards were substantially consistent with the goals of the legislation

The third conclusion is the board structures of NSOs under the *CCA* were substantially consistent with the goals of the new legislation. The major issue with

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respect to the board was the methods for selecting directors. One of the most direct mechanisms for increasing accountability of directors is the authority to select and remove directors. As such, the legislation limits the number of director appointments on the board, which puts the responsibility to select the board mainly on the members of the corporation.

Previously, NSOs have utilized a number of director selection methods, some of which were already consistent with what the legislation is trying to achieve and some were not. For example, a board composed of regional representatives that were selected via *ex officio* appointment is not consistent with what the legislation is trying to achieve. However, a slight change to this *ex officio* appointment is more consistent with legislation, but is still subject to the director selection restrictions. An example of this slight change is a regional representative that is elected to the NSO board by their PTSO. Since the PTSO is a member of the NSO, the regional representative has technically been elected by a member, but the distinction in the *NFP Act* is that all members must elect directors; thus this director selection method is a hybrid of a member-elected director and regional appointment. In the latter method, the NSO would need to change the director selection method slightly to have such a director elected by all NSO members, as opposed to only the members of the PTSO from which that director came. The board structures of NSOs studied had primarily elected directors and very few *ex officio* regional representative directors.

The fact that most of the NSOs were no longer using mostly appointed *ex officio* director shows that their board structures were consistent with modern practice. The two exceptions (NSOs 2 and 6) had primarily appointed boards with a composition designed

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for regional representation. It was clear that most of the organizations were already moving away from regional representation and instead utilizing a board composition focused on competencies. While the legislation does not address the type of board, a competency-based board is more consistent with its guidance for director selection than a regional representative-based board. Regardless of the reasoning, the board structures of NSOs studied shows that sport was already structured in a way that aligns with the goals of enhanced accountability, the issues were in how the directors were selected and the need for a greater proportion to be elected versus appointed.

Conclusion 4 – PTSOs are relied upon in the governance of the NSO

The fourth conclusion is that NSOs view the provincial and territorial sport organizations as their most relevant stakeholders and typically deserving of a voting role in the governance of the organization. Establishing membership categories was a significant issue for sport organizations but it was perceived as the easiest change for NSOs to make. The *NFP Act* forced NSOs to assess their membership structure by enhancing the rights of members. The legislation forced NSOs to define who their members are and which stakeholders should have more substantial rights, specifically those rights that allow more direct involvement in the governance of the corporation (i.e. voting rights). This was particularly relevant for sport because many of the NSOs had multiple membership categories with different voting rights allocated to each prior to the new legislation.

Sport organizations have a variety of stakeholders with different interests in the NSO. For example, associations or government agencies that provide funding have a different stake (i.e. financial) than a partner sport association or honorary member. The

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challenge was to establish which stakeholders should have direct input in the governance of the corporation through voting rights. The NSOs established that the stakeholder that always has a significant voice in governance is the PTSOs. Despite the number of other important stakeholders such as funding agencies, coaches, officials, and athletes, the NSOs indicated that the voting membership would always include the regional sport associations. Only one NSO awarded votes to the stakeholders other than the regional associations, whereas the others sometimes allowed these groups to have input but through non-voting mechanisms. An important stakeholder in the overall enterprise of sport is the athlete. While the other stakeholders may also be important, the role of the athletes became an issue as it highlights the dilemma of their role in the governance of sport. With the PTSOs established as the main stakeholder with voting rights, does this leave the athlete without a voice in one of the most important organs of governance?

There are other ways for athletes to be involved in governance besides membership rights. The Respondents communicated that the athlete's voice is valued in the NSO, but their avenue for input is not through voting membership. One of the main reasons is that overall, athletes are perceived to have inconsistent interests in governance. Respondents indicated that athletes have not typically been interested in the business affairs of the corporation and not really engaged enough to justify including them in a voting membership category. Many NSOs have a different formal structure in place to include athletes in decisions. The NSO's solution to the enhanced meaning of member is changing the name of an athlete member to 'participant' or 'registrant'. Subsequently, the mechanism for maintaining an outlet for athletes to provide input on matters of governance is creating something to the effect of a board "sub-committee" for athletes.

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Respondents described such a committee as a way to give athletes a voice and a way to communicate directly to the board on relevant issues. This committee serves the same function as a separate membership category, but without voting rights, and gives national athletes the opportunity to provide input on decisions that concern them.

Answering the Research Questions

The four conclusions overlap but they do address and give substance to the Research Questions. Research Question 1 asked what federal sport leaders perceive to be the mandate of the *NFP Act*? As a group, NSO leaders thought that the legislation's mandate was to modernize governance practice and to create a minimum standard for good governance practice across the sector at large. The first two conclusions provide a response that shows how the NSO leaders perceived the mandate of the legislation. The NSO leaders understood the intention underlying the legislation and communicated their understanding of the fundamental goals. Regardless of whether their organization needed to make major or minor changes, the sport leaders demonstrated that they understood what the *NFP Act* was intended to facilitate.

Research Question 2 asked how federal sport leaders think the requirements of the *NFP Act* would impact the governance structure of their organization and, in general, would affect their organization. The overall perception held by NSO leaders was that the effect of the changes was not radical. The legislation forced NSOs to re-assess their membership structure, specifically evaluating to whom they should be accountable and which stakeholders should have a vote in governance matters. Sport leaders perceived that the changes to membership would have no effect on governance since the voting stakeholders would remain unchanged. The NSOs' voting membership structure was not

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perceived to be affected because a change in terminology, such as changing the title of a stakeholder to something other than ‘member’, allowed the organization to maintain their existing voting membership structure. Regardless of the perception, there were changes to the membership structures of NSOs, in some cases very radical changes, as most had to deal with removing non-voting member categories.

The effect on board structure was only dramatic for those NSOs using *ex officio* and other appointed director selection methods. For most NSOs, the board structure would remain unchanged but the mechanism for putting directors on the board will change somewhat. As a result, sport leaders perceived that the board would function as it did before the new legislation because the change revolved the methods for selecting directors and not changing the role of the board. With the exception of two NSOs that made dramatic changes to their board, the Respondents anticipated that a greater number of elected positions would not have an impact on how the board governs the NSO.

In the end, NSO leaders perceived the legislation to have a minor impact overall, but initially there was a lot of discussion and some anxiety about the legislation. The anxiety leading up to the enactment of the *NFP Act* was justified because there had not been a major change of this magnitude for the not-for-profit sector for over 70 years. It was thought that there would be greater repercussions; sport organizations were hiring expert consultants, forming special committees, spending a significant amount of time and money to deal with the transition process. Ultimately, the legislation turned out not to be as troubling for sport as was originally anticipated. A positive consequence of the process was a confirmation of some good aspects of good governance, namely mechanisms of accountability and transparency, which brought some of the lagging

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organizations up to date. In addition, the transition towards the *NFP Act* showed that NSOs as a group were well on their way, if not already there, to modern good governance practice.

Recommendations for future research

This study focused narrowly on how some structural aspects of NSO governance were affected by changes necessary to comply with new not-for-profit legislation. There are three future studies that could help to fill in some of the gaps left by this study: a longitudinal study to follow-up with NSOs to explore the long-term effects of the changes made, a parallel study on multi-sport service organizations (MSOs), and a qualitative study examining the perceived impact of the *NFP Act* on the athletes role in governance.

First, a follow-up longitudinal study that would track the impact of the changes NSOs made to comply with the legislation would yield data that would address the issues this study addressed. The NSOs made adjustments to their structure to comply with the requirements of the *NFP Act*. A longitudinal study could explain the success or failure of such structural changes. Did the changes to director selection and membership categories have an effect on governance? Were further changes necessary?

Secondly, this study focused only on NSOs and did not look at federally incorporated MSOs, which were also affected by the *NFP Act*. The organizational structures of MSOs are slightly more complex because they have a different orientation with their stakeholders and different focus for their accountability. The membership structure of MSOs can be drastically different; some have no members at all whereas others have other sport organizations as members such as NSOs, coaching associations and affiliate sport associations. For example, some MSOs such as the Sport Dispute

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Resolution Centre of Canada do not have members, whereas an MSO such as the Canadian Olympic Committee has 32 categories of membership, including NSOs, other MSOs, individuals and corporations.

The third recommendation is a study that investigates the impact of the legislation from the perspective of athletes. The role of the athlete in the governance of the NSO became an important issue for this study and raises a related concern about ‘athlete-centeredness’. Some Respondents referred to being athlete-centered but also raised concerns about the difficulty of doing so through the governance structure. One Respondent stated that the legislation has made it more awkward and difficult to involve athletes in the governance of the organization. Many Respondents indicated that maintaining the “athlete voice” in the administration of the sport was important, but most NSOs do not have an institutionalized mechanism for acquiring athlete input. Since this study only examined the perceptions of NSO leaders in a volunteer and paid role, it would be beneficial to examine how the NSO’s other important stakeholders (i.e. the athletes) perceive the impact of the legislation. The athlete perspective on the impact of the legislation would provide a complete organizational perspective of any structural changes. Do the athletes feel they have lost their ability to provide input for those that changed? Do athletes feel included in the governance of the NSO? Do they want the responsibility of voting on matters that are broader than direct interests? Such questions would be the focus of a qualitative study that revolves around the athlete perspective of the legislation’s impact.

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Post script – NSO structures after transitioning to the *NFP Act*

At the time of writing this report, the transition deadline has passed meaning all NSOs have transitioned to the *NFP Act*. The findings showed that the major themes discussed were membership categories, director selection methods and the role of athletes. On that basis, Table 10 shows the changes to governance structure based on the NSOs' posted updated by-laws.

Table 10 <i>Snapshot of NSO structures based on by-laws post-transition</i>										
NSO	Board Size		Director selection methods (E or A)*		Athlete Director(s)		Member classes		Voting member classes	
	<u>Before</u>	<u>After</u>	<u>Before</u>	<u>After</u>	<u>Before</u>	<u>After</u>	<u>Before</u>	<u>After</u>	<u>Before</u>	<u>After</u>
1	10	14	Mostly E	All E	2	2	1	1	1	1
2	18	8	Mostly A	7 E, 1 A	1	1	12	1	4	1
3	9	8	Mostly E	All E	0	1	4	2	2	2
4	9	11	Even	10 E, 1 A	1	0	5	2	3	2
5	9	7	Mostly E	6 E, 1 A	0	0	6	2	2	2
6	31	10	Mostly A	9 E, 1 A	2	0	5	1	2	1
7	10	NA	Mostly A	NA	1	NA	3	NA	1	NA
8	10	10	Even	9 E, 1 A	2	2	5	1	1	1
9	8	NA	Mostly E	NA	1	NA	6	NA	1	NA
10	7	6	Mostly E	All E	1	0	2	1	1	1
11	3	3	Mostly E	All E	0	0	1	1	1	1

Note. NSO 7 and 9 did not post their updated by-laws at the time of writing this report (NA = not available).

* Director selection methods column: "E" means "elected" and "A" means "appointed"; the "Before" column data identifies the primary mechanism used for selecting directors on the Board; the "After" column data displays the precise selection mechanism for each Board position after transitioning to the *NFP Act*.

Respondents indicated that the limitation on appointed positions would not have a significant impact. The perception was that the directors who ended up on the board would primarily remain unchanged, and it was simply a matter of modifying the manner for selecting that individual. Table 10 shows that many NSOs have made significant changes and shifted to fully elected boards. The updated by-laws of NSOs indicated that

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“general directors” are prominent with very few specialized director positions. With that said, five NSOs have opted to use one appointed director position that is primarily reserved for a treasurer. Time will tell whether the same competencies will be as easily maintained now that the board cannot simply appoint someone. In response to this issue, most NSOs now have a nominations committee written into the by-laws (if they didn’t already have one) that’s dedicated to recruiting qualified candidates for the board.

Even though many NSO boards were already “policy-governing”, it seems that the straggler organizations have caught up. There are no longer any regional representative-based boards used by the organizations in this study, but NSOs have found a way to maintain the input of their provincial and territorial organizations. For instance, NSO1 allocates five “Provincial Director” positions on the board, but these directors are elected by all members and represent the interests of all PTSO, not simply those of the organization from which they were nominated. In other NSOs, the regional voice is maintained through an advisory council that reports to the board. In a similar fashion, a few NSOs have created a separate title, for example “Board observer” or “Partner”, to allow certain individuals the ability to be present at board meetings without having a formal position on the board. Indeed, for some NSOs it was simply a matter of changing terminology to maintain “status quo” to some degree.

With respect to membership categories, the dilemma for sport was establishing which stakeholders should be called members in a voting category. It was anticipated that most NSOs would create a single member class composed of the PTSOs. While many NSOs followed this membership structure, three organizations created two voting membership classes: NSO5 has a second class for directors, NSO4 created a second

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voting class reserved for associations, organizations and corporations that support the purposes of the organization, and NSO3 has a separate class for national athletes. Similar to the method of maintaining “status quo” at the board level, NSOs created a separate title to allow certain stakeholders the opportunity to attend annual meetings without being formally recognized as voting members. For example, NSO6 uses “Life patron” instead of “Honourary member” and NSO8 uses the term “Associate” for other stakeholders. As expected, the majority of NSOs still rely almost exclusively on the regional associations when it comes to governance.

On the athlete issue, the data showed that NSOs typically involve athletes in governance at the board level (if at all). It was interesting that three NSOs (4, 6, and 10) eliminated athletes on the board and instead created a non-voting mechanism for athletes to provide input. For instance, NSO10 created an “Athlete’s Council” and the Chair and Co-Chair attend Board meetings but are not directors and have no vote. What would Sport Canada think about this? Would this satisfy their suggestion of allowing national athletes the opportunity to have input on matters that directly affect them? It is noteworthy that NSO3 did not previously involve athletes in governance in any capacity, but now has a separate voting member class for athletes with the exclusive right to elect an “Athlete Director” to the board. After complying with the *NFP Act*, there are still significant differences amongst NSOs for athlete involvement in governance. There is clearly no consensus in sport with respect to athlete input, which indicates that the level of athlete involvement in governance depends on other factors within the NSO. Perhaps it is an organizational cultural issue, or maybe it is contingent on the executives in power

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and athletes available at the time. These unknowns provide further justification for a comparable study focused on the athlete perspective of NSO governance.

Reflections

The study sought to understand the impact that new legislation is having on the governance of NSOs. Initially, designing the study was challenging because the *NFP Act* had just come into force so there was little literature about the legislation except transition guides and explanations of the provisions. There were no existing studies and almost nothing written for sport, which meant that there was little to use as a foundation for the study's design. This study is the first to examine the impact of the *NFP Act* on sport organizations. That said, there was a plethora of literature on corporate accountability and transparency and governance, which helped create a theoretical foundation for the study.

The study was conducted during the transition window, which was the timeframe given to not-for-profits to make the necessary changes to comply with the legislation. The timing of the study raised concerns about the consistency of the data from interview respondents. The concern was that sport leaders would be interviewed at varying points in the transition process, which could affect the outcomes of the interviews. The transition status of the NSO affected the interviews in that the Respondents coming from organizations early in the process did not have as much information regarding the structural changes. For example, at the time of the interview some NSOs, such as NSO2, already had a new set of by-laws approved by their members, whereas others (NSO3 and 4) were in the process of drafting new by-laws to present to their members at their next annual meeting. In any event, the focus of the interviews was on the perceived impact and

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the anticipated impact not the actual outcomes of changes made to comply with the legislation. Ultimately, the transition status affected the interviews in that some Respondents could not comment on approved changes but regardless, they were still able to comment on the planned changes based on their previous by-laws and knowing the requirements of the legislation.

A related concern is how the study's design was influenced by the analysis of the legislation's requirements, specifically pertaining to the mechanisms of enhancing accountability and transparency. It was well established that these goals would be manifest through the structural aspects of governance, namely director selection and membership rights. The content analysis of the legislation showed that many provisions favoured enhancing accountability rather than transparency. The provisions that addressed transparency addressed reporting requirements, minimum notice periods, and the content of financial reports, among other procedural guidance. The commentary from interview respondents seemed to follow the same narrow view of transparency in that it was about disclosure of financial statements and other documents. Transparency, as defined in this document, is also about open and honest leadership, which includes more than simply distributing documents. Transparency also means openness with respect to how decisions are made, the rationale behind decisions, or the process used to come to decisions.

The concern is that there was an unintentional bias created when designing this study, which focused on the measures of accountability both in the interview phase of data collection and in the analysis. The results and conclusions indicated that sport organizations were doing okay with respect to organizational transparency, but this issue

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was not pursued any further. It is possible that the research design, including the interview questions, tended to focus on issues of accountability because that is what the analysis of the legislation revealed. In the end, it seems as though this potential unintentional bias is a limitation of the study as it inadvertently pushed aside the legislations goal of transparency in the pursuit of exploring accountability measures.

What could have been done? One way to address this would have been to ask interview respondents to define or explain what transparency and accountability meant.

Respondents were asked if these concepts had any resonance in their organization, but they were not asked to explain what they thought being accountable or transparent meant. Another way would have been to analyze NSO by-laws according to their mechanisms of transparency such as notice periods for reporting or other disclosure of materials. The earlier phases of research design could have potentially avoided this bias by putting more emphasis on the legislation's provisions concerning transparency. Pulling out more transparency mechanisms from the *NFP Act* and incorporating them into the interview guide somehow may have resulted in a more equal discussion on both of the legislation's goals.

Another noteworthy concern was the widespread use of consulting firms. Almost all of the NSOs studied indicated that they had utilized an expert consulting firm to aid in their transition. Some NSOs retained a consultant for the duration of the transition process while others utilized their services only in the planning stages. This suggests that the transition to the legislation was too complex for sport organizations to cope with independently. Granted, a couple NSOs handled the transition without hiring a consultant, and some Respondents dismissed the difficulty of the process altogether.

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Perhaps the changes required to comply with the legislation was less complicated for some sports than for others. The question that arises is to what extent did the consultants' perspective influence the Respondents and what impact did consultants have overall? The use of consulting firms creates some consistency amongst sport organizations in that they are receiving the same message and knowledge. The same consulting firm was utilized by the majority of the NSOs in the study, which further contributes to the spreading of consistent knowledge. NSOs that started the transition earlier could have helped those organizations that started later by sharing solutions to any arising transition issues. Respondent 5R1 said that it is common in the national sport culture to share knowledge when addressing common problems; for example, 5R1 recently called a peer in another NSO to ask how they addressed athletes when redefining membership categories to comply with legislation. In the end, consistency amongst the Respondents' perceptions could be attributed to more than the use of the same consultant.

Finally, my hope for the study was to produce information that would be useful for sport practitioners. The gap between sport management academics and practitioners is often referred to in the literature (Chadwick, 2009; Chalip, 2006; Zeigler, 2007), and one of my goals was to contribute to bridging this gap from a governance standpoint. The conclusion that the legislation was necessary for sport stresses the importance of being open to organizational change, which highlights the benefit of being progressive and implementing best practices and industry trends before they become government mandated. Conclusions surrounding membership demonstrates that it is important for sport organizations to find a place for the athlete voice. Depending on the nature of the sport, for instance club-based sports, it may be necessary to also find a way to engage

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athletes or “participants” beyond the national teams. This conclusion ties into the necessity for a formalized communication structure with stakeholders, which is a key factor in promoting accountability in the organization. While sport was already in good shape with respect to accountability, NSOs may want to go beyond the usual tactics to engage members in order to foster openness and build trust so as not to alienate their key stakeholders.

The *NFP Act* transition deadline has passed but that is not to say that these conclusions cannot be useful to NSOs. Similar not-for-profit legislation is forthcoming in Ontario, the *Ontario Not-for-Profit Corporations Act (ONCA)*, and in British Columbia. ONCA will undoubtedly pose similar issues for Ontario sport organizations who can now rely on the experience of their NSO for guidance on transition. The not-for-profit sector will continue to grow and evolve, so sport practitioners should not fall into a lull thinking “that’s it for governance”. Best practices will continue to change over time and since it is unlikely that sport will ever be truly independent of government regulation, the potential for further mandated changes is always a possibility.

References

- Aguilera, R. V. (2005). Corporate governance and director accountability: An institutional comparative perspective. *British Journal of Management*, 16, 39-53.
- Aguilera, R. V., & Cuervo-Cazurra, A. (2004). Codes of good governance worldwide: What is the trigger? *Organization Studies*, 25, 415-443.
- Aguilera, R. V., & Cuervo-Cazurra, A. (2009). Codes of good governance. *An International Review*, 17(3), 376-387.
- Bandsuch, M., Pate, L., & Thies, J. (2008). Rebuilding stakeholder trust in business: An examination of principle-centered leadership and organizational transparency in corporate governance. *Business and Society Review*, 113, 1, 99-127.
- Bell-Laroche, D. (2010). *Moving from values inaction to values-in-action: An explanation of how values can be managed intentionally by National Sport Organizations* (Master's thesis). Brock University, St. Catharines, Ontario.
- Ex officio. (n.d.). In Black's Law Dictionary Free 2nd Ed. Retrieved from <http://thelawdictionary.org/ex-officio/>
- Blumberg, M. (2011, October 13). *Canada Not-for-profit Corporations Act Suitcase*. Retrieved from: http://www.globalphilanthropy.ca/index.php/blog/category/new_canada_not-for-profit_corporations_act_federal_corporations/p 1-184.
- Bothwell, R. O. (2004). Trends in self-regulation and transparency of nonprofits in the U.S. *The International Journal of Not-for-Profit Law*, 2, 3, 1-20.
- Burke-Robertson, J., & Godel, L. J. (2011, May). *Here comes the CNCA: Are you ready to advise your clients?* Paper presented at the meeting of The Canadian Bar Association, Toronto, ON.

NFP ACT AND NSO GOVERNANCE

Canada Corporations Act (1970, c. C-32). Retrieved from Department of Justice Canada website: <http://laws-lois.justice.gc.ca/PDF/C-1.8.pdf>

Canada Not-for-Profit Corporations Act (2009, c. C-23). Retrieved from Department of Justice Canada website: <http://laws.justice.gc.ca/eng/acts/C-7.75/>

Canadian Bar Association. (2011). Registered Canadian Amateur Athletic Associations and Charities Matters. Ottawa, ON: Canada.

Canadian Soccer Association. (2009). Strategic Plan 2009-2013. Ottawa, ON: Canada.

Chadwick, S. (2009). From outside lane to inside track: Sport management research in the twenty-first century. *Management Decision*, 47, 1, 191-203.

Chalip, L. (2006). Toward a distinctive sport management discipline. *Journal of Sport Management*, 20, 1-21.

Corbett, R. (2006). *Form follows function*. Retrieved September 1, 2006, from <http://www.sportlaw.ca/category/planning-governance/governance/>

Corbett, R. (2011a). *New corporations act creates opportunities for NSOs*. Retrieved April 5, 2011, from <http://www.sportlaw.ca/category/planning-governance/governance/>

Corbett, R. (2011b). *Is the new federal corporations legislation on your radar?* Retrieved June 27, 2011, from <http://www.sportlaw.ca/category/planning-governance/governance/>

Corbett, R. (2011c). *Sport governance – Some thoughts on the eve of a new government*. Retrieved June 1, 2011, from <http://www.sportlaw.ca/category/planning-governance/governance/>

NFP ACT AND NSO GOVERNANCE

- Corbett, R. (2011d). *Wait and hurry up! New corporations act to take effect October 17, 2011*. Retrieved October 14, 2011, from <http://www.sportlaw.ca/category/planning-governance/governance/>
- Corbett, R. (Sport Information Resource Centre, SIRC). (2012). Sport governance webinars: Canada Not-for-Profit Corporations Act [Video webcast]. In *Sport Governance Portal*. Available from <http://www.sirc.ca/governance/webinars.cfm>
- Cornforth, C. (2012). Nonprofit governance research: Limitations of the focus on boards and suggestions for new directions. *Nonprofit and Voluntary Sector Quarterly*, 41, 6, 1116-1135.
- Crawford, D. A., & Carter, C. B. (December, 2011). *A good governance structure for Australian Cricket*. Retrieved from http://www.cricket.com.au/pv_obj_cache/pv_obj_id_75546B76F57C10E85A1F2174110882E5B4865B00/filename/CA-Governance-Review-Part-1.ashx
- Creswell, J. W. (2002). *Qualitative inquiry & research design: Choosing among five Approaches*. Thousand Oaks, CA: Sage (Chapter 2).
- Cumming, P. A. (1973). *Corporate law reform and Canadian not-for-profit corporations*. Report to the Department of Consumer and Corporate Affairs. Ottawa: Information Canada.
- Cuskelly, G. (2004). Volunteer retention in community sport organisations. *European Sport Management Quarterly*, 4, 2, 59-76.
- Deflem, M. (2008). *Sociology of law: Visions of a scholarly tradition*. New York, NY: Cambridge University Press.

NFP ACT AND NSO GOVERNANCE

Denzin, N., & Lincoln, Y. (2005). *The sage handbook of qualitative research*. Thousand Oaks, CA: Sage.

Dickerson, R., Howard, J., & Getz, L. (1971) *Proposals for a new business corporations law for Canada*. Report to the Department of Consumer and Corporate Affairs. Ottawa: Information Canada.

Eakin, L., & Graham, H. (2009). Canada's non-profit maze: A scan of legislation and regulation impacting revenue generation in the non-profit sector. *Wellesley Institute*, 1-34.

Ebrahim, A. (2003). Accountability in practice: Mechanisms for NGOs. *World Development*, 31, 5, 813-829.

Enjolras, B. (2002). The commercialization of voluntary sport organizations in Norway. *Nonprofit and Voluntary Sector Quarterly*, 31, 352-376.

Ferkins, L., Shilbury, D., & McDonald, G. (2009). Board involvement in strategy: Advancing the governance of sport organizations. *Journal of Sport Management*, 23, 245-277.

Ferkins, L., & Shilbury, D. (2011). Good boards are strategic: What does that mean for sport governance? *Journal of Sport Management*, 2-47.

Fry, R. E. (1995). Accountability in organizational life: Problem or opportunity for nonprofits? *Nonprofit Management & Leadership*, 6, 2, 181-195.

Garsten, C. (2003). The cosmopolitan organization – an essay on corporate accountability. *Global Networks*, 3, 3, 355-370.

Geeraert, A. (June 27, 2013). *Good governance in international non-governmental sport organisations: An empirical study on accountability, participation and executive*

NFP ACT AND NSO GOVERNANCE

body members in sport governing bodies. Istanbul, Turkey: Association for the Study of Sport and the European Union.

Goldfarb, C. S. (May 6, 2011). *Dual loyalties on non-profit boards: Serving two masters*.

Paper presented at the meeting of the Canadian Bar Association & Ontario Bar Association National Symposium on Charity Law.

Goodstein, J., & Boeker, W. (1991). Turbulence at the top: A new perspective on governance structure changes and strategic change. *The Academy of Management Journal*, 34, 306-330.

Government of Canada. (2011). *Corporations Canada*. Ottawa, Ontario: Industry Canada. Retrieved from http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/hcs0_3938.html

Government of Canada. (2012, January 26). *Background Paper – Canada Not-for-profit Corporations Act*. Retrieved from https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs0_5170.html

Gray, W. D. (2010). The late, but welcome, arrival of a new federal not-for-profit corporations law. *Canadian Business Law Journal*, 49, 40-65.

Gray, W. D. (2011, June). *Practitioner's guide to the new Canada not-for-profit corporations law*. Paper presented at the meeting of The Ontario Bar Association, Toronto, ON.

Guba, E. (1981). Criteria for assessing the trustworthiness of naturalistic enquiries. *Educational Resources Information Centre Annual Review*, 29(2), 75-91.

Hansell, C. (2003). *Corporate governance: What directors need to know*. Toronto, ON: Carswell.

NFP ACT AND NSO GOVERNANCE

- Harvey, J., Thibault, L., & Rail, G. (1995). Neo-corporatism: The political management system in Canadian amateur sport and fitness. *Journal of Sport & Social Issues*, 19, 3, 249-265.
- Hess, D. (2005). Social reporting and new governance regulation: The prospects of achieving corporate accountability through transparency. *Ross School of Business*, 1-26.
- Hirshhorn, R. (1997). *The emerging sector: In search of a framework*. Ottawa: Renouf.
- Houlihan, B., & Green, M. (2008). Modernization and sport: the reform of sport England and UK sport. *Public Administration*, 87, 3, 678-698.
- Hums, M. A., & MacLean, J. C. (2004). *Governance and policy in sport organizations*. Scottsdale, AZ: Holcomb Hathaway.
- Huse, M. (2005). Accountability and creating accountability: A framework for exploring behavioural perspectives of corporate governance. *British Journal of Management*, 16, 65-79.
- Hoye, R. (2003). The role of the State in sport governance: An analysis of Australian government policy. *Annals of Leisure Research*, 6, 3, 209-221.
- Hoye, R., & Cuskelly, G. (2007). Board-executive relationships within voluntary sport organisations. *Sport Management Review*, 6, 53-74.
- Huse, M. (2005). Accountability and creating accountability: A framework for exploring behavioural perspectives of corporate governance. *British Journal of Management*, 16, 65-79.
- Inglis, S. (1997). Roles of the board in amateur sport organizations. *Journal of Sport Management*, 11, 160-176.

NFP ACT AND NSO GOVERNANCE

Johnson, J., Daily, C. M., & Ellstrand, A. E. (1996). Board of directors: A review and research agenda. *Journal of Management*, 22, 409-439.

Kearns, K. P. (1994). The strategic management of accountability in nonprofit organizations: An analytical framework. *Public Administrative Review*, 54, 2, 185-192.

Kihl, L. A., Kikulis, L. M., & Thibault, L. (2007). A deliberative democratic approach to athlete-centred sport: The dynamics of administrative and communicative power. *European Sport Management Quarterly*, 7, 1, 1-10.

Kikulis, L. M., & Slack, T., & Hinings, B. (1995). Toward an understanding of the role of agency and choice in the changing structure of Canada's national sport organizations. *Journal of Sport Management*, 9, 135-152.

Kikulis, L. (2000). Continuity and change in governance and decision making in national sport organizations: Institutional explanations. *Journal of Sport Management*, 14, 293-320.

Kitching, A., & Wispinski, J. (2004). *Bill C-21: Canada Not-for-Profit Corporations Act*. Ottawa: Library of Parliament.

Kosnik, R. D. (1987). Greenmail: A study of board performance in corporate governance. *Administrative Science Quarterly*, 32, 163-186.

Krippendorff, K. (2004). *Content analysis: An introduction to its methodology* (2nd Ed.). Thousand Oaks, CA: Sage.

Kvale, S. (1996). *Interviews: An introduction to qualitative research interviewing*. Thousand Oaks, CA: Sage.

NFP ACT AND NSO GOVERNANCE

- Kvale, S., & Brinkmann, S. (2009). *Interviews: Learning the craft of qualitative research interviewing*. Los Angeles, CA: Sage.
- Lincoln, Y. S., & Guba, E. G. (1985). Establishing trustworthiness. *Naturalistic Inquiry*, 289, 331.
- Luoma, P., & Goodstein, J. (1999). Stakeholders and corporate boards: Institutional influences on board composition and structure. *The Academy of Management Journal*, 42, 553-563.
- Lynall, M. D., Golden, B. R., & Hillman, A. J. (2003). Board composition from adolescence to maturity: A multi-theoretic view. *The Academy of Management Journal*, 28, 416-431.
- Man, T. L. M. (2011, June). How CCA corporations continue under the CNCA. Paper presented at the meeting of The Ontario Bar Association, Toronto, ON.
- Mays, N., & Pope, C. (1995). Rigour and qualitative research. *British Medical Journal*, 311, 109 -112.
- McGloin, S. (2008). The trustworthiness of case study methodology. *Nurse Researcher*, 16(1), 85-94.
- Mercier, R. (Sport Information Resource Centre, SIRC). (2012). Sport governance webinars: Board Models and Structures [Video webcast]. In *Sport Governance Portal*. Available from <http://www.sirc.ca/governance/webinars.cfm>
- Merriam, S. B. (1998). *Qualitative research and case study applications in education*. San Francisco, CA: Jossey-Bass.
- Merriam, S. B. (2009). *Qualitative research: A guide to design and implementation*. San Francisco, CA: Jossey-Bass.

NFP ACT AND NSO GOVERNANCE

Morse, J. M., Barrett, M., Mayan, M., Olson, K., & Spiers, J. (2002). Verification strategies for establishing reliability and validity in qualitative research.

International Journal of Qualitative Methods, 1, 2, 13-22.

Nanda, V. P. (2006). The “good governance” concept revisited. *The ANNALS of the American Academy of Political and Social Science*, 603, 269-283.

National Survey of Non-profit and Voluntary Organizations. (2006). *Sports & recreation organizations in Canada*. Toronto: Imagine Canada.

Nichols, G., & James, M. (2008). One size does not fit all: Implications of sports club diversity for their effectiveness as a policy tool and for government support.

Managing Leisure, 13, 104-114.

Patton, M. Q. (2002). *Qualitative research and evaluation methods* (3rd ed.). Thousand Oaks, CA: Sage.

Potts, S. D., & Matuszewski, I. L. (2004). Ethics and corporate governance. *Corporate Governance*, 12, 2, 177-179.

Prince, V. (2011, June). *Special issues under the new not-for-profit acts*. Paper presented at the meeting of The Ontario Bar Association, Toronto, ON.

Raynard, P. (1998). Coming together. A review of contemporary approaches to social accounting, auditing and reporting in non-profit organisations. *Journal of Business Ethics*, 17, 1471-1479.

Ribstein, L. E. (2005). Accountability and responsibility in corporate governance. *The Berkeley Electronic Press*, 34, 1-62.

Sam, M. P. (2009). The public management of sport. *Public Management Review*, 11, 4, 499-515.

NFP ACT AND NSO GOVERNANCE

- Sherry, E., & Shilbury, D. (2011). Impact of social expectations on ethical governance of sport organisations. *Annals of Leisure Research*, 10, 413-430.
- Shilbury, D., & Ferkins, L. (2011). Professionalisation, sport governance and strategic capability. *Managing Leisure*, 16, 108-127.
- Stake, R. (1995). *The art of case research*. Thousand Oaks, CA: Sage.
- Thibault, L., & Babiak, K. (2005). Organizational changes in Canada's sport system: Toward an athlete-centred approach. *European Sport Management Quarterly*, 5, 2, 105-132.
- Thomas, E., & Magilvy, J. K. (2011). Qualitative rigor or research validity in qualitative research. *Journal for Specialists in Pediatric Nursing*, 16, 151-155.
- Tracey, S. J. (2010). Qualitative quality: Eight "Big-Tent" criteria for excellent qualitative research. *Qualitative Inquiry*, 16, 837-851.
- Travers, M. (2010). *Understanding Law and Society*. New York, NY: Routledge.
- Weiss, R. S. (1994). Learning from strangers: The art and method of qualitative interview studies. New York, NY: The Free Press.
- Willis, J. (2007). *Foundations of qualitative research: interpretive and critical approaches*. Thousand Oaks, CA and London, England: Sage.
- Woods, N. (1999). Good governance in international organizations. *Global Governance*, 5, 1, 39-61.
- Yeh, C. M., & Taylor, T. (2008). Issues of governance in sport organisations: A question of board size, structure and roles. *World Leisure*, 1, 33-44.
- Yin, R. K. (2003). *Case Study Research: Design and Methods* (3rd ed.). Thousand Oaks, CA and London, England: Sage.

NFP ACT AND NSO GOVERNANCE

Young, D. R., Bania, N., & Bailey, D. (1996). Structure and accountability: A study of national nonprofit associations. *Nonprofit Management & Leadership*, 6, 4, 347-365.

Zadek, S. (2003, September). In defence of non-profit accountability. *Ethical Corporation Magazine*, 34-36.

Zeigler, E. F. (2007). Sport management must show social concern as it develops tenable theory. *Journal of Sport Management*, 21, 297-318.

Appendix A

Canada Not-for-Profit Act (2009) “PART 13”

FUNDAMENTAL CHANGES

Amendment of articles or bylaws:

197. (1) A special resolution of the members — or, if section 199 applies, of each applicable class or group of members — is required to make any amendment to the articles or the by-laws of a corporation to

- (a) change the corporation’s name;
 - (b) change the province in which the corporation’s registered office is situated;
 - (c) add, change or remove any restriction on the activities that the corporation may carry on;
 - (d) create a new class or group of members;
 - (e) change a condition required for being a member;
 - (f) change the designation of any class or group of members or add, change or remove any rights and conditions of any such class or group;
 - (g) divide any class or group of members into two or more classes or groups and fix the rights and conditions of each class or group;
 - (h) add, change or remove a provision respecting the transfer of a membership;
 - (i) subject to section 133, increase or decrease the number of — or the minimum or maximum number of — directors fixed by the articles;
 - (j) change the statement of the purpose of the corporation;
 - (k) change the statement concerning the distribution of property remaining on liquidation after the discharge of any liabilities of the corporation;
 - (l) change the manner of giving notice to members entitled to vote at a meeting of members;
 - (m) change the method of voting by members not in attendance at a meeting of members;
- or
- (n) add, change or remove any other provision that is permitted by this Act to be set out in the articles.

Revocation:

(2) The directors of a corporation may, if authorized by the members in the special resolution effecting an amendment under this section, revoke the resolution before it is acted on without further approval of the members.

Amendment of number name:

(3) Despite subsection (1), if a corporation has a designating number as a name, the directors may amend its articles to change that name to a verbal name.

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Appendix B

Total sample population of NSOs

- Organizational profiles of all NSOs based on the published by-laws in effect prior to the enactment of the *NFP Act* and/or information posted on the NSO's webpage
- Membership sizes from on Bell-Laroche (2010)

Legend:

Director Selection (DS)

Competency (C)

Membership Rights (MR)

Representative (R)

National Sport Organization (n=59)	Changes <u>not</u> required [DS MR]		Board Comp.	Primarily Elected (E) or Appointed (A) board [#Apt of Total]		Board Size	Number of Membership Categories		Member-ship size
							Total	Non-voting	
Alpine		x	C	6 of 13	E	Medium	1	0	S
Archery			R	11 of 17	A	Medium	16	3	VS
Athletics	x		C	5 of 10	Even	Small	5	4	M
Badminton	x		C	0 of 7+	E	Small	6	1	M
Baseball			R	13 of 16	A	Medium	3	2	L
Basketball			C	6 of 12	Even	Small	5	2	M
Biathlon			R	13 of 13	A	Medium	5	2	VS
Blind Sport		x	R	5 of 7	A	Medium	1	0	VS
Bobsleigh/Skeleton	x	x	C	0 of 7	E	Small	4	0	VS
Bowling Ten Pin		x	R	9 of 12	A	Medium	3	0	M
Bowling 5 Pin		x	R	21 of 21	A	Large	1	0	
Bowls			R	17 of 20+	A	Large	2	1	S
Boxing			R	17 of 22+	A	Large	5	3	VS
Broomball		x	R	10 of 10+	A	Medium	1	0	S
Canoe Kayak		x	R	9 of 9	A	Small	8	0	M
CP Sports (Boccia)			C	6 of 10	A	Small	3	2	VS
Cricket			R	10 of 17	A	Medium	6	4	M
Cross Country	x		C	1 of 9	E	Small	3	2	S
Curling			C	10 of 10	E	Small	4	3	L
Cycling	x		C	1 of 8	E	Small	4	3	M
Diving	x		C	0 of 5	E	Small	6	2	S
Equine			C	4 of 14	E	Small	5	1	M
Fencing	x		C	0 of 7	E	Small	3	2	S
Field Hockey			C	3 of 9	E	Small	8	2	M
Football			R	? Of 10	-	Small	-	-	M
Freestyle		x	C	? Of 3-30	E	Small	1	0	VS
Golf	x		C	1 of 11	E	Small	8	5	L
Gymnastics			C	4 of 13	E	Small	2	1	L
Hockey			R	23 of 31	A	Large	5	3	VL

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Judo	x		R	0 of 11	E	Medium	5	4	S
Karate	x		NA	2 of 11	E	Small	4	3	S
Lacrosse			R	0 of 22	E	Medium	4	2	M
Luge			C	11 of 21	A	Medium	4	3	VS
Racquetball		x	R	11 of 17	A	Medium	1	0	S
Ringette	x		C	0 of 9	E	Small	5	2	M
Rowing			R	12 of 25	E	Large	12	8	S
Rugby		x	C	3 of 9+	E	Small	1	0	M
Shooting		x	R	17 of 23	A	Large	1	0	M
Skate Canada *			C	19 of 31+	A	Large	2	1	L
Snowboard			R	4 of 12	E	Small	4	3	S
Sport Parachute	x		R	0 of 6	E	Small	-	-	VS
Soccer			R	13 of 21	A	Large	5	2	VL
Softball			C	3 of 7	E	Small	6	4	L
Speed skating	x		C	0 of 7	E	Small	6	5	S
Squash	x		C	2 of 8	E	Small	4	2	M
Swimming	x		C	0 of 7	E	Small	9	6	M
Synchro	x		C	1 of 7	E	Small	2	1	VS
Table Tennis			R	12 of 14	A	Medium	4	3	M
Taekwondo			R	3 of 7-15	E	Large	4	3	M
Tennis	x		C	2 of 13	E	Medium	4	3	M
Triathlon			C	5 of 15	E	Medium	3	2	S
Volleyball	x		C	1 of 7	E	Small	2	1	M
Water Polo			C	3 of 11	E	Small	4	3	VS
Waterski/Wakeboard	x	x	C	0 of 3	E	Small	1	0	M
Weightlifting		x	NA	12 of 12	A	Medium	1	0	VS
Wheelchair Basketball	x		C	2 of 8+	E	Small	6	4	VS
Wheelchair Sports			C	-	-	Small	-	-	VS
Wrestling			R	10 of 11	A	Small	2	1	S
Yachting (Sail)	x	x	NA	0 of 9	E	Small	2	0	M

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Appendix C

Sample case briefing – NSO1

Sport Canada contribution	\$1,499,250	Corporate Status	REGISTERED
RCAAA Status	YES	Location	*****

Respondent 2 (Chairman), Respondent 1 (COO)

Key Areas requiring attention:**Definitions**

- "Member" vs. "Registered Member(s)"
 - Are they different member categories? Appears not... language clarification necessary
 - "Member" means the PTSOs?
 - "Registered Member": means an individual registered with NSO1 through a Member of NSO1 to play, administer, referee, or otherwise participate in the sport within Canada
- "Players List"
 - They are "Registered Member(s)"? - Thus are they a membership category without voting rights?
 - They are given the exclusive right to elect the Player Directors (male and female) [BL 6.1(b) & (c)]
 - By-laws are silent on whether they have exclusive right to remove Player Director
 - Conflict - [BL 6.5(b)] says "Players List" shall 'recommend' and 'nominate candidates' for Player Director offices, not elect them as per BL 6.1 (b) & (c)

Directors' Meeting

- BL 7.2 allows meetings by teleconference but does not provide a % of directors for approval of holding such a meeting
- BL 7.7 and 7.8 provide for another electronic means for directors' meetings (In Camera Business)
 - no mention of % of director approval for such a meeting
 - no mention of each director providing consent in advance for this method of communication
 - no mention of establishing quorum and recording votes

Committees

- Standing and Nominating committees are outlined in by-laws but there is no mention of whether these officers will receive remuneration or not

Organizational Snapshot:**Board composition (competency)**

- 9 elected
 - 3 nominated and elected by the Members ("Provincial Directors")
 - 4 nominated by General Director Nominating Committee, approved by the Members
 - 1 elected by male players on Players List ("Male Players Representative") *NTL team*
 - 1 elected by female players on Players List ("Female Players Representative") *NTL team*
- 3 ex-officio
 - Canadian representative to the International Board
 - Former President or Chairman
 - Treasurer (appointed by Board)
- 7 of 12 directors are wholly elected by the "Members"
- Perfect ratio to allow for the 3 appointed directors offices - need to stagger terms to ensure this is possible year-to-year

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Appendix D

LETTER OF INVITATION

[date]

Dear [sport leader],

My name is **Benjamin Jacobs** and I am a graduate student in the Department of Sport Management at Brock University. I would like to invite you to participate in a research project I am doing as part of my graduate degree entitled **The *Canada Not for Profit Corporations Act*: Perceived impact on the governance of federal sport organizations**.

The purpose of the study is to develop an understanding of how the changes mandated by the recent ***Canada Not for Profit Corporations Act (NFP Act)*** are being perceived by leaders of national sport organizations. Sport organizations selected to participate in the study must be federally incorporated and, because of the requirements of the legislation, must have to make changes to its directors' selection procedures, the allocation of membership rights or a combination of both factors. Upon review of your organization's current by-laws, I have identified that your organization meets these criteria. I will be conducting interviews with two leaders in senior positions within your organization: one at the senior staff level and one at the executive level.

As a participant, you will be asked to participate in a 60 - 90 minute interview with me. Where a face-to-face interview is not possible, either a telephone or video conference call (e.g., Skype) could be used in substitute. The interview will be audio recorded and I will transcribe it verbatim upon its completion. I will send you a copy of the transcript in order to give you an opportunity to confirm its contents are factually accurate. If you have any issues with the interview transcript you can communicate them to me by email for up to two weeks after receiving the transcript.

Possible benefits to you of your participation in the study include engaging in a detailed conversation exploring the impact of the legislation and its fit with your organization. An executive summary of the analysis and results of this study will be provided to you and could potentially be useful as your organization transitions to the new legislation.

If you have any questions about your rights as a research participant, please contact the Brock University Research Ethics Officer (905 688-5550 ext. 3035, reb@brocku.ca)

If you have any other questions, please feel free to contact me. Thank you.

Benjamin Jacobs
MA Graduate Student
Department of Sport Management
Brock University
(905) 399-2365
Bj06fr@brocku.ca

Hilary Findlay
MA Supervisor
Department of Sport Management
Brock University
(905) 688-5550 Ext.4811
hfindlay@brocku.ca

This study has been reviewed and received ethics clearance through Brock University's Research Ethics Board [file # 12-217 - FINDLAY]

Appendix E

LETTER OF INFORMED CONSENT

July

x^{th/nd}, 2013

Study Title: **The *Canada Not for Profit Corporations Act*: Perceived impact on the governance of federal sport organizations**

Dear:

You have been invited to participate in a research study. The purpose of the study is to explore how sport officials view the impact of changes required by the *Canada Not for Profit Corporations Act (NFP Act)* on sport organizations. Representatives of selected national sport organizations required by the legislation to make changes to their governance structures will be included in the study.

WHAT'S INVOLVED

You will be asked to participate in a semi-structured interview with the Principal Student Investigator. The interview will take approximately 60-90 minutes. It will be audio recorded and transcribed upon completion. Shortly after the interview has been completed, the Principal Student Investigator will send you a copy of the transcript in order to give you an opportunity to confirm its factual accuracy. Any content-specific issues you may have can be communicated to the Principal Student Investigator by email for up to two weeks after receiving the transcript.

RESEARCHER INFORMATION

Principal Investigator:
Benjamin S. Jacobs, Graduate Student
Department of Sport Management
Brock University
 905-399-2365; bj06fr@brocku.ca

Faculty Supervisor:
Hilary A. Findlay, Supervisor
Department of Sport Management
Brock University
 (905) 688-5550 Ext.4811; hfindlay@brocku.ca

POTENTIAL BENEFITS AND RISKS

Possible benefits of your participation in this research study include the opportunity to engage in a detailed conversation about the new legislation and to provide feedback concerning its 'fit' with your sport organization. In addition, the analysis and results of this study will be provided to you, giving you further information from across the sport sector concerning the impact of the requirements of the *NFP Act*. There are no risks associated with this study. To protect your identity, and that of your organization, each interview participant and organization will be assigned a pseudonym.

CONFIDENTIALITY

The information you provide will be kept confidential. Your name will not appear in any thesis or report resulting from this study. Data collected during this study will be kept in a locked location in the Department of Sport Management at Brock University until the interviews are completely transcribed and analyzed, at which time the paper copies of the documents will be shredded. Digital copies of the files will also be deleted from the Principle Student Investigator's computer hard drive and any peripheral devices. The transcripts of the interviews will be kept for a period

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of five years for possible secondary use in any future research that may be done within the same general area of study. Access to this data will be restricted to the Principal Student Investigator (Benjamin Jacobs), the Faculty Supervisor (Dr. Hilary Findlay), and potentially a professional transcriber.

If a professional transcription service is used, the transcriber will be required to sign a confidentiality agreement prior to being given the audio transcripts. The transcriber will be given secure temporary access to the audio files of the interview and will be required to delete any saved copies off his/her computer upon completion of each transcription for which they were hired.

VOLUNTARY PARTICIPATION

Participation in this study is voluntary. You may decline to answer any questions or participate in any component of the study. Further, you may decide to withdraw from this study at any time and may do so without any penalty or loss of any benefits to which you are entitled.

PUBLICATION OF RESULTS

Results of this study may be published in professional journals and presented at conferences. Feedback about this study will be available from the Principle Student Investigator at the address above. It is anticipated this study will be completed by the end of September 2013.

CONTACT INFORMATION AND ETHICS CLEARANCE

If you have any questions about this study, or require further information, please contact the Principal Student Investigator or the Faculty Supervisor using the contact information provided above. This study has been reviewed and received ethics clearance through the Research Ethics Board at Brock University [file # 12-217 - FINDLAY]. If you have any comments or concerns about your rights as a research participant, please contact the Research Ethics Office at (905) 688-5550 Ext. 3035, reb@brocku.ca.

Thank you for your assistance in this project. Please keep a copy of this form for your records.

CONSENT FORM

I agree to participate in the study described above. I have made this decision based on the information I have read in this Information-Consent Letter. I have had the opportunity to receive any additional details I wanted about the study and understand that I may ask questions in the future. I understand that I may withdraw this consent at any time.

Name: _____

Signature: _____ Date: _____

Appendix F

Semi-Structured Interview Questions

IQ1: Where is your organization at in the transition to the new legislation?

- How far along the transition process

IQ2: What is your view of the legislation? (RE its intended purpose, goals, and requirements for your org)

- a. What do you perceive to be the mandate or intent of the legislation?
- b. If they provide "accountability and transparency"...
 - What do these terms mean to you?
 - Do these concepts have any resonance within your organization?
 - Do you feel that your org already possesses these qualities? In what ways?
 - How do you see this affecting your organization?
- c. How is the legislation being received within your organization, i.e. by your peers and colleagues? (what did other officers/directors have to say) What were some of the indicators that made you think it was/not?
- d. Are the changes being embraced, reluctantly accepted, or just accepted because it is government mandated? Why do you think that is?

IQ3: Do you feel that the legislation is necessary? (RE its mandate, requirements of NSOs)

- a. Do you think that the government should be enacting such regulation for private organizations? (This legislation impacts the entire NFP sector - 19,500 organizations)
- b. While it may be necessary for other types of organizations in the sector, do you think it is necessary for sport? Why, or why not?
- c. Do you think sport fits in with the broader not-for-profit area? Why or why not?

IQ5: What areas of your organization have been most impacted as a result of the requirements of the legislation?

- a. Why were these areas affected so much/no so much?

IQ6: To what degree has the mandate of the legislation changed the governance structure of your organization?

- a. Will these changes improve or hinder the governance of your organization? What are the reasons that make you feel that way?
- b. Where does the athlete's voice fit in the new governance regime? What happens to their voice and/or authority to impact decision-making?

IQ7: How will the legislation impact the directive of your sport organization? (Intended vision of governance)

- a. How will regional representation (PTSO) be affected given the restrictions on appointed directors?
- b. How will the desired competencies on the board be maintained given the restriction on appointed directors?

IQ8: Further comments regarding the impact of the legislation on your NSO or anything else we discussed today?

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Refined Practical Interview Guide

<i>RQ1: Perceptions on mandate (director selection, membership rights, procedural rules)</i>	<i>RQ2: Impact on governance structure (requirements > how that will affect the organization)</i>
IQ topics: <ul style="list-style-type: none"> - Personal feelings and thoughts RE the legislation - Organizational reaction to the legislation - Perceived purpose/goal of the legislation - Government involvement / Is it necessary - Sport versus the NFP Sector at large - Greatest impacted areas 	IQ topics: <ul style="list-style-type: none"> - Governance structure before/after - How will this impact governance of org - Help or hindrance - Greater member involvement - Loss/Gain of authority (athlete, regional rep) - Board (qualifications, recruitment)

IQ1: STATUS/STAGE OF NSO WITH TRANSITION**IQ2: VIEW OF THE LEGISLATION (INTENT, GOALS, REQUIREMENTS)**

- e. What do you perceive to be the mandate or intent of the legislation?
- f. Accountability/Transparency: What do these terms mean to you? Already exist? How so?
- g. Perceptions of peers/colleagues: What were indicators that made you think this?
- h. Are the changes being embraced, reluctantly accepted, or just accepted because it's government mandated? Why do you think that is?

IQ3: IS THE LEGISLATION NECESSARY? (MANDATE, REQUIREMENTS)

- d. Should the government be enacting such regulation for private organizations?
(This legislation impacts the entire NFP sector - 19,500 organizations)
- e. While it may be necessary for other types of organizations in the sector, do you think it is necessary for sport? Why, or why not?
- f. Sport versus the broader not-for-profit sector: Does it fit, why/not? Is sport different? How so?

IQ5: GREATEST IMPACT AREAS DUE TO REQUIRED CHANGES TO BE IN COMPLIANCE

- b. Why were these areas affected so much/no so much?
- c. Director selection: how will your organization deal with nominations from the floor?
- d. Member classes: single class? Different than before? Why/not?
 - i. Athletes as registered participants? Impact of this?

IQ6: LEGISLATION'S [MANDATE] IMPACT ON GOVERNANCE

- c. To what degree has the mandate of the legislation changed the governance structure of your organization?
- d. Hinder/improved the governance of your organization? Reasons that make you feel that way?
- e. Importance of the athlete's voice in the governance? Any changes under new regime?

IQ7: IMPACT ON THE DIRECTIVE OF ORG (intended vision of governance)

- c. What is the intended vision of governance? Can it be achieved under new structure?
- d. Voting - large membership? Absentee (proxy) voting permitted? How will this work? Is it relevant?
- e. How will regional representation or other board composition matters be affected given the restrictions on appointed directors?
- f. How will the desired competencies on the board be maintained?

Active Listening:

- Be careful not to insert myself in the response, confirm by repeating back
- If I understand you correctly, you are saying/believe/feel that ... [re-phrase their comment]
- What reasons / indicators / events made you think that
- 'Soft background' info to collect: Their role in org, experience in general, with bylaws, expertise

Appendix G

Code book (explanation of each code)

PRIORI CODES:

TRNST – transition status, how far along are they? When did they start?

ATTID – attitude or approach by the organization and individual to the transition.

1. **MIN** – just want to get over it, minimal compliance and move on
2. **MED** – almost indifference, recognition it's something that has to be done, considers implications, make changes accordingly
3. **MAX** – opportunistic approach, take the chance to make some good changes for the future of the org, etc.

NFP4P – any comparison or mention of the characteristics of not-for-profit sector corporations compared to for-profit (business sector); including whether they should be distinguished, similarities, etc.

SPORT – is sport any different, specific impact on sport, belongs with the greater NFP sector

MNDTE – perceived intent of the legislation

ACCTB – accountability identified as the main purpose of the legislation

TRANS – transparency identified as a purpose of the legislation, financial reporting, etc.

MODRN – modernization of old legislation, archaic, outdated

BOARD – changes to the board and any general mention of this area of impact

BDTYP – board type, moving to policy/competency board vs. Representative

ELCTD – primarily elected board, limited appointees, what is the impact?

ATHLD – athlete directors or representatives, how they are now going to be elected – by whom? Keep them or not?

RECRT – thoughts about recruitment of directors, limited appointed means greater importance on recruiting and nominations committee

REGRP – regional representation, ways of maintaining/discontinuing, etc.

MEMBR – enhanced rights of members, voting

1MBCL – single membership class, prescriptive, what's the impact

FNDCH – fundamental change provision, impact of this

TERMS – definition and terminology changes

DEFLT (aka operational, procedural)

NMFLR – nominations from the floor, thoughts

PROXY – absentee voting or proxy voting, utilized y/n?

MBMRR – members ability to requisition meeting, bring motions from the floor

TECHN – any mention of advancements in technology that enable organizations and their operations

EMERGENT CODES:

RQ1 - mandate of the legislation:

WRKAR – there are “work-arounds” to achieve what you want, term or language change, other ways to recognize groups excluded: i.e. Honourary members

STQUO – find a way to transition while maintaining the old regime, “if it aint broke”

FLXBL – Act allows flexibility/leeway to organize structure and governance as needed

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RQ1 - mandate of the legislation:

CLRTY – clarifies who members are, clear definition of member vs. other stakeholders

EFCNT – operations and governance more efficient, bylaws simpler/streamlined, commentary about how the new Act is simple, easy to follow/understand

BURDN – busy work, something else to comply with, waste of time and resources

YREND – year-end of 03/31 may not work for sport anymore, audit requirements, timing, season of sport, etc.

RQ2 - impact on governance

NOCHG

1. Pre-existing accountability, no real impact
 2. Pre-existing transparency, no real impact
 3. No impact on governance of organization
 4. Terminology change (same voting members, same directors)
 5. Operations, way of conducting business will remain the same
-

CTLST – re-examine things (fix things), “while the body is on the table, let’s fix some other stuff”, overcome barrier for change

GOVRV – recent governance review (within last decade), organization already made significant changes and improvements to governance, the trend or push in recent years

MBENG – level of membership engagement in the process, translation to ease of transition?

OBCLB – primarily elected boards creates good BOD turn over, gets rid of the ‘old-boys club’ cycle, perpetual boards

TRUST – lack of trust in previous years, translation to hesitancy with this transition?

RSPBG

LGLEX – legal background, experience and education

MGMEX – management/exec experience, business education

SPMAX – sport management background, experience working specifically in sport orgs

UNRLD – coming from an unrelated discipline, background, or lacking experience

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Appendix H**Coding process**

1. GET TO KNOW THE DATA (READ, REREAD, LISTEN, RELISTEN)
2. WRITE DOWN INITIAL IMPRESSIONS, QUESTIONS, REACTIONS
3. ESTABLISH PURPOSE OF PROJECT AND STORY I WANT TO TELL, KEEP THIS IN MIND AS I CODE TO KEEP ON TRACK
4. CREATE CODE LIST & CODE BOOK (A PRIORI + EMERGENT)
5. CODING TECHNIQUE FOR TEXT TRANSCRIPTS
 - a. HIGHLIGHT TEXT IN COLOUR OF THE GRAND CODE THEME
 - b. CREATE SIDE NOTE TO IDENTIFY SUB-THEME CODE
 - c. KEEP RUNNING DOCUMENT OF EACH CODE (Microsoft Office ONENOTE tab), COPY AND PASTE TEXT UNDER SPECIFIC CODE (INCLUDE TRANSCRIPT NAME AND PAGE #)
6. CREATE “ANALYTICAL MEMOS” AFTER EACH 5 INTERVIEWS CODED (HELPS TO TRACE STEPS TAKEN, TIE CODES INTO LARGER THEMES, DESCRIBE EMERGING PATTERNS, RECORD HUNCHES)
7. IN SEPARATE DOCUMENT, TRACK THOUGHTS, REMARKS, IDEAS, AND CONNECTIONS MADE DURING CODING, (USED LATER FOR WRITE UP, THIS WILL FORM THE INTINIAL ANALYSIS)

Sources:

Center for Evaluation and Research. (2012a). *Analyzing Qualitative Data*. Retrieved from http://www.tobaccoeval.ucdavis.edu/documents/Tips_Tools_17_2012.pdf

Center for Evaluation and Research. (2012b). *Coding Qualitative Data*. Retrieved from http://www.tobaccoeval.ucdavis.edu/documents/Tips_Tools_18_2012.pdf

Sample of Analytical Memo:

Analytical Memo (1R1 – 2R3)

Questions and Reactions:

- Were the consultants and lawyers “pumping” or “hyping” this transition up intentionally to foster business?
- Is there a difference in attitudes between staff and volunteers? Overall and within each NSO.
- What are the factors that influence their attitude or perception?

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- Does the respondents' background impact how they view the legislation and thereby affect their attitude towards it? I.e. did those with legal backgrounds understand the implications more? Does having legal experience even translate to a greater appreciation of the Act?
- What is the significance of the transition status of the organization and when they started making changes to transition? Are those that left it late and are panicking having more negative perceptions and feelings towards the transition process?

Ideas, connections, themes

- “terminology” has been used in many areas and lines of questioning
 - Simply a change in terminology for membership classes, who a member is, director positions, how they are put on the board
- “providing clarity” or “clarifying definitions”, “simplifying”, all speaking to the language change (a cousin to the code “terminology”)
- There is a connection between feelings towards the transition and the level of member engagement, either in the process or in the governance of the organization in general.
- Actively engaging members is a form of accountability, one of the main goals of the legislation, building relationship between executives and stakeholders of corporations
- Member engagement equates to trust, aka transparency and accountability
- Establishing trust between members and executive is crucial to creating transparency
- How does the “trust” cycle work in an NSO? Top-down or vice versa? Symbiotic relationship?
- Very frequent and high value placed on this transition as being a catalyst for organizational review, stimulating change beyond compliance, likely a connection to leaders with opportunistic attitudes and approaches
- The legislation allows flexibility, it dictates overarching “principles”, also called “spirit”
- Downside to the use of proxies and absentee voting, discouraging member engagement, encourages members to keep their distance, could be counterproductive to establishing accountability and trust
- ‘no change’ code and sub codes are a theme on their own, the idea of there being no perceived impact or change in the 5 areas
 - ‘work around’ code could be a practical example or illustration of how there is a perception that there is “no real change” simply because they can operate the same as before
 - ‘status quo’ and ‘flexible’ are in the same theme as ‘work around’, but status quo more so refers to the attitude or goal during transition, finding a way to maintain the former structure while still complying – perhaps this is missing the essence or spirit of the legislation
- ‘single membership class’ is a result of the fundamental change provision, thus the code ‘fundamental change’ should perhaps be collapsed into the ‘1MBCL’ code, or is it a sub theme? What’s the difference

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- “modern” is used in a couple different ways, describing the legislation due to the age of the previous Act, and how the NFP Act is making operations more modern... perhaps this needs to be defined
 - Modern in the technological advancements? i.e. default/procedural rules?
 - Modern in the sense that it encourages more current business and governance practices

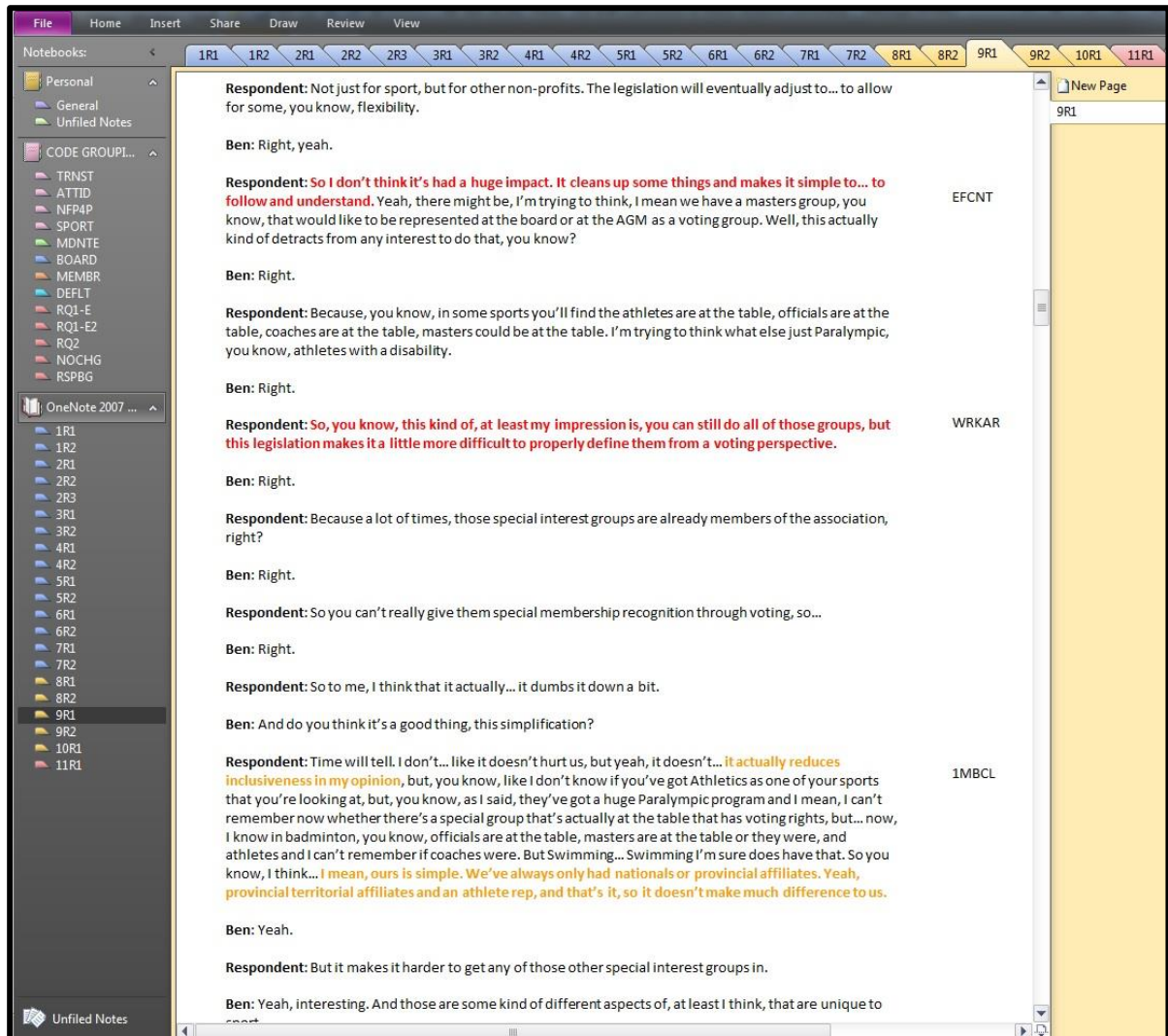
Analytical Memo (3R1 – 7R2)

- 3R1 mentioned ‘building credibility’ in reference to recruiting good people for the BOD
 - Is this a reference to having good governance, i.e. accountability/transparency?
 - Lack of trust in this NSO? Creating a negative political environment which deters good board candidates?
- Club-based sports – trend of member engagement difficulties, i.e. communication? Relying on PSOs to deliver messages
 - Changes in member classes going to change this?
 - Contemplation of including clubs as members of national body? Direct accountability
- Mixed reviews on the use of proxy voting and absentee voting
 - Many are not utilizing because it is perceived to be counter to member engagement, encourages absenteeism and laziness to attend AGMs
 - Some have recognized its value as a tool for BOD meetings but not for AGMs
- ‘Sport is different’ discourse
 - No strong argument for how it is different from a governance perspective
 - Features identified as unique include: relationship between stakeholders is stronger in sport, passion for the ‘product’, government oversight and reporting structures, complicated nature of running the organization (fundraising, HP and mass participation, officials, coaches, national events, international events)
- Legislation is both permissive and prescriptive
 - Emphasizes elected directors, but the appointee provision still gives boards a fallback too maintain their competencies in the event the membership don’t elect the board how they wish (contingency for desired gaps in skills)
 - Restriction on appointees described by a couple as a hindrance, ‘administrative hoops’ to jump through to get a qualified individual on the board w/o campaigning for election
 - Committees that support the board can ensure that certain functions remain in place, regional representation can be maintained through a council or committee
 - Fundamental change forces a single membership class, but a simple change in terminology can still allow certain groups to be recognized and be involved without the title of member
- Athlete director discourse – some mention of how athletes don’t really get the governance/business side of sport anyways, their role is ‘token’, HP athletes only think one way

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Appendix I

Organized coded data in Microsoft OneNote



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Appendix J**Sample of code data**

MODRN (green category, a sub code under “mandate” MNDTE)

- Modernization of old legislation, archaic, outdated, etc.

1R1

(Ben) ...main intent of the legislation?

Um, I think it was largely to modernize it...more simple in nature which is great because the Act that we've been using is you know 100 years old and written with old English and sort of stuff which is difficult to comprehend and really understand. So I think you know... "keep it simple", right?

I would say it is much more modern, it suits the way that business is run and how boards need to operate.

3R2

It seems to me that the Act well obviously the Canada Corporation Act is so old that obviously something is needed to be done; it's archaic.

4R1

So it was just a matter of updating everything, I guess.

5R1

Well, without knowing the details of what was in it, I was under the impression it was going to modernize not for profit organizations to put in proper procedures and things like that, which seemed reasonable.

6R1

I think as a whole...it's... from everything I read it was an attempt to bring the Corporations Act as it dealt with not for profit organizations into the 21st century...everything had been ... pretty sketchy dating back to the lifetime of ... the length of time that the legislation had been in place... I didn't think that it was a bad thing, and like I said, we were contemplating doing a full governance review anyways

7R1

...it just sort of modernizes some things...Like, it sort of streamlines a lot of things and tries to condense, I guess, as much as legislative documents can kind of condense. And also I guess it provides a little more transparency, a little more... gives a little more power, I guess, to your members as well. They have that ability to vote on those fundamental changes to an organization.

8R1

I also seem to recall that the changes to the Not For Profit Act are changes to an Act that's ancient, right? I understand that the world changes, and that therefore it is completely reasonable that we would need to change the Act per se because it's really outdated.

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8R2

I mean, it's clearly the case they wanted to bring sort of the overall umbrella legislation into... into line with the, you know, current practice

9R2

And so things aren't quite done the way they should be, and they over time, over years, you get to a situation where it's time to take a look at how you are structured, how you do business, and... just start with a clean slate again, and the Act allowed us to do that

I think a lot of non-profit organizations need help on how to... administer themselves. So, but administrative principles are pretty well the same across... sport and across nonprofits and for profit organizations I would think...

I think it's a little clearer for not for profits because it goes maybe a little further into how you set yourself up as a corporation, which they need help on I think in a lot of cases.

11R1

... That sort of old all representation kind of board structure where nothing gets done, they said we're not going to accept that. I think that also the core idea of all members having a vote is actually, in sport, quite foreign and [pauses] difficult, but it's pretty tough to argue against it...they're our owners and have a chance to own us, and so, I do think it's more democratic

So if Her Majesty wants to put strings on that, it's her prerogative and that, I think is what we have... I think the government is well within its purview to do so, and to put those kinds of rules on it maybe even more.

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Appendix K**Provisions from the NFP Act that target the goals of accountability and transparency**

Provision	Description	Goal targeted
128(3) - Election of directors	Members shall elect directors by a majority vote	Accountability
128(8) - Appointment of directors	Promotes elected directors by limiting appointed positions; total number of appointed may not exceed one third the number of elected positions. Also, appointed directors may only serve for one year	Accountability
130 - Removal of directors	Members may remove a director at any time by a majority vote	Accountability
133 - Change in number of directors	Members may amend the articles to increase or decrease the number of directors on the board	Accountability
138 - Limits on authority	The board may appoint from their number a managing director or committee of directors, but neither of these may exercise the full authority of the board	Accountability
141(1)(5) - Disclosure of interest, Voting	Directors and officers must disclose the nature and extent of interests in any material contract or transaction the corporation makes. If an interest exists, this director cannot vote on any resolution to approve or reject the transaction	Transparency
141(7) - Access to disclosures	Members have access to the information that contains disclosures of interests of the board	Transparency
152(1)(2) - By-laws, member approval	Directors may make changes to any by-laws but they will only remain in effect until the next meeting of members, at which point it must be ratified by a vote of the members	Accountability
152(6) - Member proposal	A voting member is entitled to submit a proposal to make, amend or repeal a by-law	Accountability
154(3)(4) - Voting rights	There must be at least one voting class of members	Accountability
154(5) - Right to vote	Unless the articles of a corporation otherwise provide, each member is entitled to one vote at a meeting of members	Accountability
162 - Notice provided for in by-laws	The corporation must give the voting members notice (21 days) for meetings	Transparency
163 - Right to submit and discuss	A voting member is entitled to submit a proposal, with notice, for discussion at a meeting	Accountability
163(5) - Proposal nominating directors	Members may include director nominations in proposals for meetings with approval from a minimum of 5% of voting members, but may also nominate directors at a meeting of members	Accountability
163(9) - Member may apply to court	An aggrieved member can have a court intervene and restrain the holding of the meeting if their proposal is refused	Accountability
167(1) - Requisition of meeting	A group of members holding a minimum of 5% of votes may requisition the directors to call a meeting for the purposes stated in the requisition	Accountability

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Provision	Description	Goal targeted
169(1) - Court review of election	The corporation, members, or directors may apply to a court to determine controversy with respect to an election or appointment of a director or accountant	Accountability
172(1) - Annual financial statements	The directors shall provide members with financial statements with notice at every annual meeting	Transparency
181(1)/184(1) - Appointment/Removal of public accountant	Members shall appoint a public accountant for the corporation by majority vote. They may also remove said public accountant by majority vote with the exception of a court appointment	Accountability
197 - Amendment of articles or by-laws	A 2/3 majority vote of members is required of all members in the event of any proposed fundamental changes	Accountability